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PARTICIPATION RIGHTS AND ELECTIONS:
TOWARD A TAILORED APPROACH TO
DEMOCRATISATION PROCESSES

Relatore: Prof. PAOLO DE STEFANI

Laureando: DOMENICO CASTELLANI
matricola n. 624209/IPD

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Introduction

Taking part in the conduct of public affairs is a basic human right recognised since 1948 by art. 21 of the Universal Declaration of Human Rights, and further on by a number of other international legal instruments. There are many ways to take part in the political life: it can be said, roughly speaking, that there is a kind of participation which implies a direct and active involvement in the political life; and a more basic kind of participation which is limited to the choice of the representatives in a democratic framework. This latter way, which is far less demanding and can be more easily embedded in the everyday life and activities of all people, involves all the citizens, and it is instantiated in the elections which are, therefore, the paramount event of the participatory life. Albeit participation is strictly connected to democracy, and sometimes the two concepts tend to overlap, participation is not democracy and therefore not even the elections *per se* constitute the democracy.¹ However, elections offer the citizens a fundamental space of participation to the political life, to the conduct of public affairs and to decision making mechanisms, which have a direct impact on the life of people in terms of development, enjoyment of its rights and, broadly speaking, its quality of life. But in particular the elections, as expression of the popular will, are the key moment of the foundation and legitimisation of the political power in a geographical space.

The human rights are a corpus whose every single part is strictly interconnected and interrelated with all the other parts. Therefore, if the progressive affirmation of this corpus implied a similar development of the right to participate, the end of the Cold War represented the historical moment, where the participation, under the form of democratisation processes, acquired its own momentum and spread in almost all the regions of the world.

Beyond their place among the human rights, participation and elections are, moreover, bricks of a wider process of institution building to be understood not just as the externally driven process of creation of a bureaucratic machinery, and as the realisation of a series of activities which make this machinery to properly work. It has to be imagined as far more complex set of activities implying political and cultural processes of political and institutional growth of an entire nation. As such, participation and elections cannot simply be a series of good practices and standardised activities “one size fits all circumstances”. They should, instead, be activities tailored on the historical, cultural, an-

¹ “Elections in and of themselves do not constitute democracy. They are not an end but a step, albeit an important and often essential one, on the path towards the democratization of societies and the realization of the right to take part in the governance of one’s country as enunciated in major international human rights instruments.

It would be unfortunate to confuse the end with the means and to forget that democracy implies far more than the mere act of periodically casting a vote, but covers the entire process of participation by citizens in the political life of their country”. Report of the UN Secretary General A/46/609 and Corr.1 paragraph 76 (1991)

thropological characters and needs of the country where they are supposed to take place. From this perspective, they cannot be simply imagined as activities mainstream-imposed; they, rather, have to be planned and implemented only after a careful and thorough analysis of the overall context of the country. So what is important is that the participation, and the related democracy, is developed as an endogenous political and cultural product which only can guarantee the viability of the democratic institutions. Without the involvement of the local actors, democracy does not take root, is not lasting, and the externally promoted programs can easily fail.

The importance of the growth of the democracy as process whose ownership has to be domestic, is something which has been duly recognized by the former UN General Secretary Boutros Boutros-Ghali, and clearly expressed in his *Agenda for Democratization*. In this Report it is stated that “while democratization is a new force in world affairs (. . .) it is not for the United Nations to offer a model for democratization or democracy (. . .). Indeed, to do so could be counter-productive to the process of democratization which, in order to take root and to flourish, must derive from the society itself.” The report adds that “imposition of foreign models (. . .) may generate resentment among both the government and the public, which may in turn feed internal forces inimical to democratization (. . .).”²

So whenever the international community decides to promote institution building and democracy, the intervention has to be participated by the targeted population. This means, following a pattern like the *participatory intervention* framework proposed by Chopra and Hohe, to grant “space for local voices to be expressed and for communities to get directly involved in the evolution of their own cultural or political foundations”. This means, as well, to give “time for an indigenous paradigm to coexist with, or to gradually transform during the creation of, modern institutions. Integral to the process is the design of mechanisms for genuine popular participation in administrative bodies at the local level.”³

So participation is a human right now widely accepted, and the elections are the most symbolic activity of the overall participatory structure. It is a matter, then, to understand how the elections, the participatory processes, and finally the democracy can be not only promoted all over the world, but made effective. We will focus on this mainly on the elections as a cornerstone of the participation and then of the democracy, and on the electoral observation as an instrument to monitor the electoral processes.

For this reason in the first chapter of this thesis the attention will be directed on the main interna-

2 Boutros-Ghali, B. 1996 paragraph 10.

3 Lemay-Hébert, Nicolas. (2012). p.476.

tional instruments for democracy and elections. The idea is to analyse mainly the art. 21 of the Universal Declaration of Human Rights, and the art. 25 of the International Covenant on Civil and Political Rights (along with other International Conventions) in order to have an understanding of what the human rights system says about participation.

What is said in these tools is further analysed in the second chapter, where some critical points concerning both the human rights as such, and the right to participate in particular, are highlighted. Concerning the human rights in general, a main and well known critical element is their universal value which has to be somehow seen under the light of the cultural and political differences existing in the various regions of the world. Concerning the participation right in particular, the issue is how the participation can be the legitimising element of the government -and of the power, generally speaking- without questioning the political *status quo* the same UN is funded upon, and the current idea of nation-state. This could just be a first symptom of the idea that at least the participation rights have to be interpreted, always maintaining their universality, following habits, culture and politics distinctive of the geographic areas.

The third chapter is devoted to an analysis of some UN Resolutions. In this case the goal is to identify, if any, the evolution of the UN position, and to see how the UN vision was influenced by the historical factors. But the focus is not only on the Resolution side: it is on the practical implementation as well. It will then emerge that, using the words of Goodwin-Gill, “within the context of a range of practical activities, the United Nations has maintained its interest in the democratic process and the mechanism of elections, along three themes in particular: (1) Enhancing the principle of elections; (2) Support for new or restored democracies; and (3) Respect for the principles of national sovereignty.”⁴

The fourth chapter is a short review of the way some regional organisations cope with the participation rights and how they, referring to the main international tools and resolutions reviewed in the previous chapters, promote democratisation and democracy. This promotion is addressed not only to the countries members but, in particular in the case of the European Union, to their foreign policy as well. The idea is to show how geographically spread is the idea of democracy and how, therefore, the universality is not any more simply conceptual, but it is becoming a geographical and real universality. This geographical extension implies, however, that there is not a single model of democracy, or better that there is a number of possible ways for the participation to be realised; and that each instantiation is anyway a real democracy as long as it respect some basic and essential principles.

4 Goodwin-Gill, Guy S. 2006. p.14.

The last chapter is finally devoted to the electoral processes, to the elections and to the electoral observation missions. Concerning the elections, the first paragraphs of the chapter try to show how problematic could be to implement an elections in post conflict countries, failed states, or in countries where there is not a consolidated democratic tradition. They aim to illustrate, as well, how elections are at the same time a political and a technical process, and how thin and uncertain is the border between these two aspects. The final paragraphs are devoted to the electoral observation and to the main point of this thesis. For this reason they build upon the elements analysed all along the entire thesis. In particular: the right to participate is a human right recognised in the main international tools signed by most of the States. The right to participate is widely recognised and promoted by United Nations and many other Regional Organisations. This recognition is not limited to declaration, or covenants, or conventions, but is something which affects the policies and the actions of the same international organizations. There are may different ways to participate to the political life, and each one of these can be considered democratic. The main and most apparent event through which the participation manifests itself are the elections, which are at the same time a political and a technical event. So, even if politically well planned, the elections, due to practical constraints can fall short from their target, in particular in post conflict countries or in countries of new democracy. Using these premises, the suggested conclusion is that the electoral observation has not to be considered a judgemental activity aimed to look for irregularities and frauds, and to consequently propose sanction for the concerned country. It has, instead, to be a tool the international community offers to the countries of new democracy, or to whatever country requires it, to help them to identify the weaknesses of the process, and to find the most suitable solutions to improve it. This can be a very powerful tool which can greatly contribute to foster and nurture a domestically driven process of democratic growth involving all the possible stakeholders: civil society, voters, political parties, media and institutions. Electoral observation becomes, therefore, an important element to be considered and further developed as an integral part of the promotion of the human rights culture.

1 The Main International Instruments for Democracy and Elections

1.1 The Universal Declaration of Human Rights art. 21 and International Covenant on Civil and Political Rights art. 25: participation as a universal good.

The first step that has to be taken in order to have a sufficient comprehension of what we are talking about, and about what are the issues at stake, is to read and to analyse the main international tools where the right to participate is defined. In this framework the starting point is the art. 21 of the Universal Declaration of Human Rights (UDHR). It is not a binding document, and a quick comparison with art. 25 of the International Covenant on Civil and Political Rights (ICCPR) could help us to appreciate the way how a declaration of principles, after a few changes, became an enforceable norm.

The notions of popular sovereignty, equal access of citizens to public service and, of course, the principle of equality expressed by art. 21, are not ideas newly created by the UDHR, but they are rooted in the western culture, at least since the American and the French revolutions. However, it is only through the Universal Declaration -namely after the notion of *people* stopped indicating only a small minority of individuals, usually selected on a census or gender basis, to finally encompass the totality of adult population of a given country- that such ideas could finally get their full strength.

The first universal pillar setting out the premises for the affirmation of the participation rights and of the electoral right, is the article 21 of the UDHR. It states the following:

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

This article contains some fundamental principles governing the democratic institutions. First of all we can find the very strong principle that *the will of the people* is the basis, the foundation, of the authority of the government. Moreover, we have the idea of the inalienable right of individuals to

take part to the government of their country, and of the necessity of a system of democratic participation where every individual has equal political rights. Such political rights can be better understood under the light of others UDHR articles. In particular articles: 1, 2, 4 and 7, which help us to define the principle of equality; articles 13, 19 and 20 which concern the freedom of movement, expression and assembly; and articles 3, 5 and 9 which state some civil rights, as for instance the liberty and the security of persons.

The commitments, expressed in the article 21, have been further developed in the article 25 of the ICCPR, which reads as follows:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

As can be easily seen article 25 that can be considered like a counterpart of article 21. It sets out the same principles, but in a more logical order, and it adds up some more:

- the right to stand for public office and contest elections;
- elections that reflect the free expression of the will of the people;
- periodic elections at regular intervals;
- universal suffrage that includes all sectors of society;
- equal suffrage, in the idea of one-person, one-vote;
- the rights of all eligible electors to vote;
- the use of a secret ballot process;
- genuine elections.

However, here we will focus, more than on the similarities, on the differences between the two articles. Some of them are more apparent than real, some others are substantial and allow to appreciate the different visions among the two documents.

The first, very significant, difference is that in the ICCPR there is no mention of the *will of the people* as the basis of the authority of the government. To affirm that the popular will is the basis of the authority, means to set a completely new principle as a bedrock of the legitimacy of the power,

whose impact on the inter governmental relations could be dramatic. But one thing is to state this new conception of the legitimacy of the power in a Declaration which does not imply any compulsory action, even if, as in this case, the statement is quite strong. Much different it would have been to mention the same principle in a binding covenant which compels all the parts to respect this principle. Anyway, for the time being we just notice this absence. We will see in more detail hereinafter the implications of such principle on the very idea of democracy and participation.⁵

Another interesting difference is an apparent shift we can notice concerning the rights bearers. In the UDHR *everyone* is utilised, whereas in ICCPR we have *every citizen*. At a first glance this seems to be a kind of restriction because the focus is moved from a totality of persons (*everyone*) to a qualified group (*citizens*). But this is not the case. A citizen, following a dictionary definition, is *a person who legally belongs to a country and has the rights and protection of that country*⁶. Said in other words, a citizen is a member of the state vested with particular rights, privileges and duties. It makes sense, then, if this particular political right comes with a particular qualification of the individual. But in the frame of the comparison among the two articles, the difference between the *citizen* and *every person* gets lost, due to the fact that *everyone* is coupled, in both the occurrences of the art. 21, with a reference to the country the person belongs to. So the right of *everyone* can be enjoyed only with reference to the country, which in turn means to be citizen. Finally we can say that the two sentences could be considered as equivalent.

As a comment, it could be observed that this right to participate is strictly related to the old conception of state. Said in other words the space of the right to the political participation are the borders of the State that a person is citizen of. Now, given that the entire inhabited geographical space of the earth belongs to some State, no citizen is basically excluded from that right. However, we cannot help but to notice that there is no hint to the possibility of a universal citizenship, nor of any possible way for the right to participate to be some way disconnected from a limited and given space. It cannot move along with the individual right bearer the same way it happens with other rights, but it is linked to a particular situation. This can be considered a limit of the political rights; and the participation right seems to suffer more than others of such weakness in an era where the national Parliaments are more and more loosing the control over the most important economic and political decisions. So the right to participate loses effectiveness and meaning along with the State, which seems to represent its impassable limit. From this perspective the idea for example of an European citizenship, namely an additional citizenship bypassing the border of a single state to gain a wider regional space, is a completely new way to develop the right to participate and to get the right little

⁵ See paragraph 2.2 pag. 37

⁶ <http://www.merriam-webster.com/dictionary/citizen> browsed on October the 2nd 2014.

bit closer to the idea of universality.

In none of the two articles the word *democracy* is used, and anyway the word does not appear in the Charter. Following Rosas⁷ this choice, namely to not mention *democracy*, is due to the divergent meaning the word could have in the framework of the disputes between the Soviet Union and the western block, at the time when the two tools have been drafted. Anyway, since the beginning of the Charter, the most fundamental principle of democracy is assessed in the very moment the legitimacy of a government is given by the popular will. In these articles and a “take part” wording is used instead of democracy.⁸

The third paragraph of the art. 21 of UDHR is very different from the previous ones. In the first two paragraphs we have the expression of some general statements concerning the right to participate. Here, instead, we are far from generality, but we have very detailed instructions about the minimal requirements an election must comply in order to be a believable expression of the popular will. The same happens with paragraph b of art. 25 of ICCPR. However, a difference can be noticed between the two articles concerning the procedures. In the UDHR it is written that the elections shall be by universal and equal suffrage, and shall be held *by secret vote or by equivalent free voting procedures*. In the ICCPR the *equal procedures* is missing and therefore there is no other way for the elections to be held but through *universal and equal suffrage [...] by secret ballot*.

In the UDHR attention is paid to the freedom of the electoral process, in particular to the voting procedures. At a first glance it could seem odd that in a Universal Declaration, namely in a document which should be aimed to express general principles, so much attention has been paid to a procedural aspect. Truth is that this care about the procedures is a signal of how they are a substantial part of the participatory process. In the democratic game⁹ the respect of the rules and of procedures is not a simple technical issue, but it becomes part of the content of the notion of democracy. Transparency, fairness, and rule of law: all of these are essential part of democracy and they can be obtained and guaranteed through the respect of the procedures. At the same time, this attention on the procedures reveals a kind of haziness in their definition. In other words, the emphasis is on the idea of the necessity to follow a stated rule with some generic prescriptions; and no determinacy at all is

⁷ Rosas, Allan. 1999, p. 438.

⁸ Peter, building her argument on the conclusions of Henry Steiner, sustains that the right to participation does not entail a right to democracy. Democracy is not required by human right conventions, and democratic participation is only encouraged as a programmatic ideal. There is the possibility of alternative paradigms where elements of different types of regimes can coexist, and where a non electoral type of participation can be imagined. The right to political participation has an “election clause” and a “take part” clause and both of them can be interpreted “in ways that do not entail a democratic ideal of political equality. The right to political participation, understood in this way, neither presupposes democratic institutions nor does it demand that they be imposed where they are absent.” Peter, Fabienne 2013 p. 11.

⁹ I'm using here the adjective *democratic* even if, as it will be explained further on in this work, *participation* and *democracy* are not exactly synonymous.

set on the rule itself, whose only requirement -to be compliant- is to allow the freedom of vote. Secret ballot could be a way, but other systems are possible provided they respect this only requirement. Anyway, the focus seems to be only on the act of casting the vote, and not on the overall electoral process.

In the ICCPR too, we have the attention on the *freedom*. However, this time, the freedom which should be granted is not the one concerning the voting procedures, but is the *freedom of the expression of the will* of the voters. As a consequence, this time, the procedures are not under discussion: equal suffrage and secret ballot are the two pillar to be respected, and no alternatives are offered. What is under evaluation now it is the electoral process in its entirety. Each and all the listed aspects of the electoral process (genuineness, periodicity, universality and equality of the suffrage, secrecy of the vote) are the building blocks of a complex structure, which as a whole has to guarantee the voters to freely express their will. In other words it seems that the attention has shifted from some more technical aspects, the secrecy of vote, to a more general issue, the result, namely the outcome of the process seen in its political meaning.

This shift in the focus allows to have a more efficient tool for measuring the genuineness of the elections, and therefore for answering a series of questions about the legitimacy of an electoral process. The underlying idea seems to be that the western democratic way is not the only viable manner to adhere to the art. 25 prescriptions, but that there are some possible alternative models. The only characteristic required to a model is it to be able to represent the will of the people in a faithful manner, and that this will be freely expressed. Then, once that the final target has been reached, no doubt can be cast on the procedures, whatever is the political or cultural framework. So, it appears that the States have a quite wide margin of choice in devising their electoral systems, due to the fact that the true element at stake is the final outcome judged in its totality.

This is the reason why it seems that there is no clarity about some issues like, for instance, if the party pluralism is required or not for an election be considered free and fair. Several African leaders, Julius Nyerere in particular, argued in the sixties that multiparty system is not a requisite to genuine electoral choices.¹⁰ And in reality an extensive interpretation of the art. 25 does not prohibit one-party elections, provided that this single party be able to represent all the different opinions spread in the society. This extensive interpretation was the only way to keep together, during the cold war period, some opposite visions of the society and of the political life and, how it has been noticed by Fox¹¹, the very lack of a debate on such a issue suggest that on the field of the pure form no one of the two field was likely to prevail.

10 See Fox, Gregory H. 1992. pp. 556 and followings.

11 See Fox, Gregory H. 1992 pp. 558.

It is interesting to note, moreover, that art. 21 is only referring to the right to take part *in the government of his country* whereas the ICCPR says that *every citizen shall have the right and the opportunity, to take part in the conduct of public affairs*. Not only the *right* then, but the *opportunity* as well. Then it is not enough just to recognise a right without an underlying framework or system allowing the right bearers to really enjoy them. A small example can enlighten the implications this shift entails. Lets think about a country with an high percentage of illiteracy, as Congo RD could be. In this case, in order the voter to be really free to express his or her choice, the voting procedures must be carefully drafted in order to be fully and easily understood by all the voters, irrespective of their literacy level. The same the ballot has to be designed in a way to avoid, as much as possible, any kind of ambiguity: for instance limiting the written parts, and printing clear pictures of candidates or the symbols of political parties. Or lets think about a post conflict country, like Sierra Leone, where many voters could have handicaps preventing, or making very difficult for them, to have access to the building where usually the polling booths are located. It is necessary that all the hurdles be removed for the people to have a real access to the polling stations to express their will. It is important, in other words, that the abstract right can be transformed in a real possibility.

The electoral process is described in the third paragraph of art. 21 and in the paragraph b of art. 25. The third paragraph of art. 21 shows a different structure compared to the rest of the article because it seems to prefer abstract concepts. At the beginning of the first two paragraphs the rights of individuals (*everyone*) are mentioned, in a fully consistent way with the idea of *human* rights; on the contrary, the third one does not mention *people* but shifts toward the abstract idea of *the will of the people*. So the *will* now the subject, and what is defined are the ways such will must be expressed through. The will of the people is the foundation of the governmental authority. And if the elections are the way through which the will of the people express itself; then elections are the ground upon which the authority is built. Here the abstract wording is prevailing both on the grammatical level (*will, authority*) and on the conceptual level (*popular*) and all the paragraph is characterised in such way. This paragraph is then a short treatise on participation, democracy, rule of law, good governance; and a technical treatise on the way how to implement electoral process.

Art. 25 of ICCPR does not mention at all the will of people as the foundation of governmental authority. The democratic process is no longer the instrument through which people's will founding the authority shows itself. It is, rather, the realisation of the possibility of the single individual to be the leading actor of the decisional processes of her community, through the choice of his or her representatives. Free and fair elections, then, are not the conceptual background upon which the democracy has to be built and the power legitimised. Elections are just the way every single person parti-

cipates in the administration of the country. In this perspective art. 25 is not only the counterpart of art. 21, but it is its natural consequence and its accomplishment. If art. 21 describes how and where the democratic power is founded, art. 25 just states the right of citizen to contest or to vote, and therefore the way the power is shaped and built. Whereas then art. 21 of UDHR is more abstract and *declares* universal principles, art. 25 of ICCPR seems to take care of the concrete realization of such principles.

1.2 The General Comment to the art. 25 of ICCPR

The General Comments (GC) are meant to clarify nature and contents of individual rights and the obligations of the States part of the covenant. In the frame of this work the analysis of GC of art. 25 of ICCPR is aimed to find a confirmation of the indications, of the clues, emphasised in the previous section. In this case we expect to find, as we just saw, a kind of movement from the abstract declaration and theoretical foundation of the right to participate, toward the concrete implementation of it. This shift happens through a clarification about the way the participation has to be understood; through cross-reference to other tools to be used in order to shed light on participation; and through an evaluation of the way the States part of the Covenant implement such right. This can explain as well the number of references to the State Reports which can be found in this GC¹².

Not surprisingly, the main topics of the GC seem to be participation (paragraph 6, 7, 8 and 19); positive measures in order the right holders can practice this right (paragraph 8 and 11); the legal framework and other technical aspects (paragraph 19, 20, 21).

1.2.1 Participation

Paragraphs 6 to 8 deal with the meaning of *participation in the conduct of public affairs*. What the *conduct of public affairs* is, it is explained in paragraph 5. It is a broad concept, related to the exercise of political power, covering all aspects of the public administration, and covering the formulation and the implementation of policies at all levels, from local to international. Once it has been defined to what event *participation* refers to, the GC explains the way the participation can take place. So, we have a direct participation when the citizen exercises directly the power as a member of legislative bodies, when they take decisions on particular issues through referenda or electoral process, or when they take part to public assemblies endowed with decisional powers on local is-

12 Committee, UN Human Rights. General Comment No. 25, The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Article 25), UN Doc. No. CCPR/C/21/Rev. 1/Add. 7, 1996. paragraph 3, 13, 14, 18, 22, 24.

sues. On the other hand we have no direct participation when, for the conduct of public affairs, the citizens choose representatives whose power, once elected, finds its boundaries in the constitutional provisions. The actions of such elected representatives are judged through the successive electoral processes which, as we have just seen, has to be *by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors* as stated in art. 25 paragraph b.

However, it deserves a particular mention the last of the three paragraphs devoted to participation, where a wider meaning of participation is shortly sketched. This particular way to take part involves not a direct power to be exerted: the participation can take place through public debates and dialogues, or through the capacity of the voters to organize themselves. We can read these lines as a sketch of the way a civil society can enter the decisional processes.

As we will see hereinafter¹³, there are many levels of participation, and many ways to be interested in the management of public affairs. The most important way is the electoral process. However, in this case the meaning of the participation cannot to be understood as self-concluded when the election takes place through a regulated electoral event. Of course, a citizen could decide only to participate in elections, and not to let himself be involved in any other kind of political activity. But he can decide, directly or thorough political organisation (political parties or grass root associations) to follow more closely the decision process. In a fully accomplished democracy there are a number of intermediate political bodies allowing citizens to have a voice in the decisions at city, or provincial, or regional level. For a complete realisation of such a kind of more engaged participation it is necessary that some other rights are guaranteed, namely freedom of expression, assembly and association, i.e. the content of articles 19 and 20 of the UDHR. The elections become then only the top of an iceberg, the most visible event, and the most symbolic one, of a much more complex and multifaceted activity.

How important are the freedoms of art. 19 and 20, is best detailed in paragraph 12. They are a prerequisite to the effective enjoyment of the freedom of vote, and they must be fully protected and guaranteed. This reference to the enjoyment of other rights confirms, if necessary, that the interdependence and complementarity of rights is not a matter of principle but a concrete reality, a constitutive and essential factor in the very moment the rights are enjoyed, or exercised in the practice. We cannot just limit to assert a right, without undertaking to build the political and practical foundations for its full enjoyment. And as a matter of fact, these premises are the other rights, in a continuous self referring structure where the rights are the mutual basis of each other.

¹³ See paragraph 3.3: Is there a human right to democracy?

This connection between right to participate and freedom of expression, assembly and association is stated again, if necessary, later on in the same GC. The second mention can be found in paragraph 12 where positive measures are listed in order to bypass or overcome any difficulty in participation. In this framework the freedom of expression, assembly and association are seen as essential conditions, to be protected, for the effective exercise of voting rights. The full enjoyment of the rights of article 25 is thus closely linked to the effectiveness of other rights in an inextricable structure, and where it gets impossible to determine a chronological or logical hierarchy of rights. And this is explicitly stated in paragraph 26 where finally it is stated that these freedoms are an essential complement to the rights of article 25.

The right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25.

1.2.2 Positive measures

After describing the meaning of participation, the GC goes on with the comment of the paragraph b. As we have already seen, the paragraph b of the art. 25 focuses on the electoral process, singling out the main features the elections must have in order to allow the freedom of choice of the voters to be properly expressed. Therefore, the elections must be genuine, periodic, by universal and equal suffrage and must be held by secret ballot. The GC interprets the content of this part as a list of specific provisions for the electoral process, and this way it shifts from the wider idea of participation to political life, to the more specific one, the elections, following the same path of the art. 25. The interpretation the GC suggests of this section is that it describes the obligation for the States to take effective measures in order the rights bearers, namely the citizens, be really able to exercise this right.

In order to clarify the meaning of these effective measures, then, the paragraphs 11 and 12 give two different examples. In the 11th we read some practical prescriptions focusing on peculiar aspects of the voting process, namely voter registration and voter education.¹⁴ As far as the first activity, the voter registration, the preparation of accurate electoral rolls is one of the key elements of a well managed electoral process. In order this individual right be respected, a careful survey of all the po-

14 "Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed. If residence requirements apply to registration, they must be reasonable, and should not be imposed in such a way as to exclude the homeless from the right to vote. Any abusive interference with registration or voting as well as intimidation or coercion of voters should be prohibited by penal laws and those laws should be strictly enforced. Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community." General Comment 25. paragraph 11.

tential voters has to be realised, which in many countries could be a logistical and political challenge.¹⁵ Not in all the countries it exist a civil roll to be used as a source for the electoral roll, so a thorough registration activity has to be put in place before any electoral activity. This is not the right place to describe in depth the challenges such activity can imply. However, it is worthwhile to be aware that even the voter registration is not a politically neutral activity, and it has lot of complexities both on the logistical side and on the political side. The logistical challenges are easy to imagine: a lot of countries do not have a reliable road system and it could be very complicated to reach every single corner of the country. The lack of a reliable power supply, the insecurity of the transport system can easily endanger the collection of the data for the roll. But besides these logistical issues, there are even bigger political implications. For instance to issue a valid identity electoral card can have a strong impact on the concept of citizenship in countries where often the ethnicity can have a more important role and value in comparison to national identity. In many countries, especially in border areas, but not only, it is quite often very difficult to determine whether an individual or a family are citizens of one State rather than another. In these cases only a public inquiry run with the help of the village community can determine if to issue or not the identification document, the inclusion in to the electoral rolls and then the right to the citizenship. How accurate such inquiries can be, and how reliable could be a topic of discussion in itself. If the local authorities are, for instance, somehow connected to a political party it is possible that they could artificially increase the number of enrolled voters declaring as eligible voters even people who are not really allowed to be. A similar kind of difficulty could arise dealing with the refugees or with displaced people. But it is enough for the time being to have even a rough idea how many problems can stem, in a less than optimal situation, when implementing the right to participate. In such a general picture, where registration is required the State has the duty to facilitate the whole process. Such an activity is an highly complex mechanism requiring lot of human and economic resources without any guarantees of success, but it is a must and it is explicitly required by ICCPR.

The same paragraph 11 of the GC pays attention to voter education campaigns as well. The voter education aimed at in this paragraph is clearly not the simple explanation how to cast the vote. It is a much broader activity which encompasses not only the electoral practice, and hence the voting procedures, but any kind of sensitisation and training aimed to all the possible stakeholders of an electoral process. Therefore it can be focused on women participation, targeted to political parties in

15 See, for instance, the activity of voter registration held in Congo RD for the constitutional referendum of 2005 and the presidential election of 2006. In some other cases, for instance for the presidential elections held in Haiti in 2006, the activity aimed to create the electoral roll was at the same time targeted to provide Haitian citizens with id cards. Such an activity, founded by EU was strategic for USA wishing to have through this a better control of illegal immigration from this country.

order to help them to have a better awareness of their role; to civil society or grass root organizations, in order them to be able to disseminate information and awareness about the elections; to political parties agents, to domestic electoral observers. A good democratic process, as a matter of fact, needs full transparency and accountability which can be obtained through the right interpretation of the roles and mechanisms of the electoral machinery, and the widest possible dissemination of this knowledge.

This short sketch of the implications of the duty of a State is useful to shed a light on a peculiarity of the right to participate in comparison to the others civil and political rights, namely the similarities it has with the economic, social and cultural rights. In order to promote the participation it is not enough for a State to refrain from unfair (or illegal) behaviour. The State, indeed, has to take a series of initiatives, requiring a political willing and a sounded engagement, in order to prepare the political space where the right can be properly enjoyed. This means that an evaluation of the actualisation of this right cannot be of the kind yes/not, but it has to take in account an evolutionary vision. The participation right is for such aspects a programmatic right, which means that it could be always improved, by continuously adapting the state's activities to the changing temporal and geographic frames.

It would be, however, a mistake to limit only to these programmatic issues the whole complexity of the right to participate. The same way all the other rights, it is interconnected, and therefore it cannot be taken as an element severed from his wider frame. So, as it is stressed in the paragraph 12 of the GC, the effective exercise of the right to vote, and so to participate, is guaranteed only if additional freedoms are guaranteed, namely the freedom of speech, assembly and association. Which means that the right to participate is guaranteed only if other human rights are respected. If we take a look to the listed freedoms, we realise that each of them is a part of the idea of democracy. The conclusion we can take is that the right to participate cannot be seen, as such, as a right to democracy, but there is a right to democracy if we add up some single pieces of the human rights architecture.

Anyway, freedom of speech, assembly and association are a prerequisite for the full participation to the political life because they contribute to create the right frame for the effective enjoyment of the right to participate. To emphasize again, the enjoyment of a political right is seen as the result of a global process involving other rights, and the right to participate as a piece of the democratic puzzle.

1.2.3 Some technical aspects

Paragraphs 19 to 21 contain what appear to be practical and technical requirements on how to manage some key elements of an electoral process which meets the standards set by the pact.

In these paragraphs there are hints to some aspects related to concrete measures to be implemented as essential components for a proper electoral process. This is the case of the secrecy of vote, of the way the security of the ballot boxes has to be guaranteed, of the way the cast votes should be counted, of the way how to assist people with handicaps, the visually impaired, illiterates, and also some general lines on how the constituencies should be drawn.

Interestingly in the paragraph 19 attention is paid to the necessity for the voter to be free from any undue influence or coercion which could distort her or his will. What deserves attention here is the connection made between the influences which can distort the voters will, and the possibility to restrict the campaign expenses. Undue influence and coercion can affect, and seriously compromise, the regularity of the democratic competition. What coercion is, it is easy to understand in his extreme manifestation. But intimidation, like showing armed people during political parties rallies, organising army parades during the campaign period and so on and so forth can be still considered a form of coercion.¹⁶ Little bit more difficult is to define what undue influence is. In order to clarify this point the GC mentions manipulative interference of any kind, and immediately after it mentions the possibility to set reasonable limitations on campaign expenses. The underlying assumption seems then to be that it is the disproportion between the economic resources of the candidates which can determine the manipulative interferences, and thus seriously compromise the regularity of the competition. Therefore, the same way reasonable limitations are admitted for some other rights¹⁷, equally some limitations are acceptable for participation rights. And these limitations are possible both at the higher level of the statement of the right, and at the lower level of the practical rules which determine its realisation in practice. Here once again we see that the realisation of this human right requires the state not just to prepare and make free the political space, but it requires, as well, a more substantive involvement which can affect directly the players, whenever the basic principle of the equality is considered in danger.

So, some additional rules are possible and maybe necessary to be sure that the electoral choice be really free from any undue influence. But, at the same time, this is a tricky point, because it admits

16 As an example of intimidation I could mention what I was reported during the Electoral Observation Mission in Uganda in 2011 when, approaching the election day, some war planes fly at very low altitude over some villages in Masindi District, frightening the villagers. It was interpreted as a warning to vote for the incumbent candidate to avoid the destruction of the village.

17 See, for instance, the possible limitations mentioned in art. 18 of ICCPR to manifest religious beliefs, or the liberty of movement of the art. 12, or the freedom of expression of art. 19.

the possibility of inherent distortions in the competition, and therefore recognise the need of a referee able to intervene on inequalities to make the process fair. The implication of all of this seems to be the necessity for the existence of a control system able to define clear rules (for instance: when the expenses campaign are not fair? What is the maximum amount of a fair campaign?) and to make them be respected. It is not surprising, therefore, to find that paragraph 20 starts establishing the necessity of an independent electoral body in charge of the supervision of the electoral process. This body must be independent not only from contesting political parties, but from the incumbent government, electoral observation missions, international donors. Of course, it appears to be very difficult to maintain a balanced position between these competing forces, but this effort to be neutral must be supported through a strong commitment of all parties, and by international community in particular.

It is a matter of supervising the process, of course, but as well to take care of all the logistic aspects, such as the secrecy of votes (in particular the absentee voting), security of the ballot boxes, independence of the scrutiny, and assistance of handicapped people.

The aim of all the mentioned measures, which is the heart of Article 25, is to ensure the free expression of the will of each single voter. These measures are politically neutral, which means that they fit every political situation. Alternative systems of voting are admitted as long as they comply with two basic principles, i.e., one person one vote, and equality between weight rating of different people. Both of these principles can be traced back to one of the basic elements of the human rights doctrine: equality between all human beings.

The State, and in particular the democratic institutions, has to be proactive and has to make the political space an even playing field, devoid of every possible pollution coming from non political elements.

1.2.4 Restrictions

In the previous paragraph the issue concerning possible restrictions of the right to participate have been hinted. I think that we should elaborate a little more on this question, given that a mention to restrictions is made at the very beginning of the art. 25.¹⁸ The art. 2 of the ICCPR, referred to in art. 25, forbids any discrimination among citizens based on particular characteristics¹⁹. However, the

18 "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions ... "ICCPR art. 25

19 Article 2 provides that all rights shall be respected "without distinction of any kind." Explicitly prohibited distinctions include "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

implication is that some restrictions, provided they are not based on the listed elements, are allowed and possible. As Fox explains²⁰ these restrictions have been included by the drafters to allow denial to some particular individuals like minors, convicts, the mentally ill, and those not meeting residency requirements. They were willing, on the other side, to allow certain limitations on the right to hold public office, such as a requirement of professional training. Apparently, then, the *reasonable restrictions* did not sound discriminatory.

In the GC to art. 25 the word *restriction* appears 6 times²¹. In the first three occurrences the restrictions are related to the participation (active or passive) into the electoral process, and they are admitted under the provision of their reasonableness. The three other recurrences are less meaningful, because they are referred to the content of State Reports whose scope is to explain and motivate the conditions under which exceptions or restrictions are applied. The verb *to restrict*, instead, appears twice and in both cases it is close to the adverb *unreasonably*. A similar result can be reached by analysing all eight occurrences of terms whose grammatical root is *limit-*. The accent is always on the *reasonableness* of the limits set, and on the concern that the limits may act improperly on the rights. All this appears to confirm that the terms and the spirit of the wording is aimed to minimize the effects of the admissible restrictions in the enjoyment of the right. The GC admits, then, the possibility of restrictions to the full enjoyment of the right; but it is clear, as well, that all the possible restrictions must be carefully regulated in order to avoid any abuse. This is, anyway, nothing new in comparison to what the very articles of the covenant say, and it is one of the basis of rule of law which is one fundamental element of democracy.

What deserves to be noticed is the fact that the reference to the *reasonableness* inserts an element of discretion which could weaken the whole consistency of the system. This reference to the *reason* could be read as the will to fund on the peculiarity of the human beings, the reason, the power to define the limits; as a kind of faith in a common and shared human rationality. If there are some innate rights pertaining to human beings as such, it is possible that there is some other primaeval principle common to all of them, which is able to set the limits and the space of application of some of the rules all the human being shares among themselves. And at the beginning of the paragraph 4 of the GC there is a statement which seems to encourage this kind of interpretation. In this paragraph it is said that any conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria. In other words it states that the conditions for exercising the right (and for limiting it) have to be based on objective and reasonable principles, which means that the ability to understand and apply with justice the norm is founded on the human reason which

20 See Fox, Gregory H. 1992 pp. 554.

21 paragraph 6, 10, 15, 18 twice and 24.

is the same for all the people, and under every latitude.

Another possible interpretation could lie in a less metaphysical assumption, directly taken from the UDHR. The same popular will, which is the basis of the authority of the governments, could be the judge of the reasonableness of all the limits set. So, the foundation of the *reason* lies on a political process, where the participation right entirely funds itself defining the space of application and, at the same time, setting the limits and the boundaries. Such kind of political construction shows its weaknesses where and when the will of the majority of the people does not respect some human rights²². But, this time it is not necessary to find a higher principle than the will of the people to solve this issue. It is the political strength of the binding pacts, namely the strength of a political will formalised and sealed in a series of international instruments, which determines the way of dealing with such kind of questions. The recognised equality of all the human beings hinders the possibility that the will of a majority deprives a minority of their rights.

1.2.5 The State Reports following the GC to art. 25

The same way as other treaties, the ICCPR implemented a mechanism of control based on periodical reports. In the case of the ICCPR these reports have to be submitted every five years, and they are expected to contain the progresses the States made in implementing -in the law and in the practice- the requirements of the Covenant. The process of reporting can have a double goal: to submit the State party to a periodical review of its behaviour in the field of the respect of the human rights and, at the same time, to offer to the State the opportunity to conduct a reflection on the legal and practical actions taken to be compliant with ICCPR. So, it is not only a matter of evaluation, but it is a way to encourage the states to make a kind of self-assessment, and to exercise some sort of criticism on their own global behaviour, because the respect for human rights is also a path of internal political growth.

The General Comment contains a number of references to State Reports, mainly aimed to define the content of the Reports themselves. So, putting together these references, it is possible to draw some sort of index of what these Reports should contain concerning the right to participate. At the same time this sort of index can offer us some elements of reflection to understand which could be the key points that most reveal the level of realisation of the right.

One of the aspects we focused on, has been the restriction of the right to vote to a category of

²² “Consider the recent referendum proposal in Switzerland to ban the building of minarets as an example. An unusually high majority of the population approved of the ban. But the question remains as to whether this decision is illegitimate on grounds of violating human rights related to religious freedom.” Peter, Fabienne. 2013 p. 8.

people, the *citizens*. Then, given that citizenship is a compulsory requirement for the individual to have the right to vote, it becomes crucial to carefully determine the legal conditions under which an individual can be recognised as a citizen of a given State. It is, thus, not surprising if the General Comment requires that in the State Reports are described the legal provisions defining the citizenship in the context of the rights protected by art. 25²³. To be citizen is, then, one of the (reasonable) restrictions allowed to identify the individuals having the right to vote. But, even if the citizenship is a necessary requirement, however it is not sufficient. Other restrictions are possible, such as, for example, a minimum age limit²⁴. Therefore, the Reports should describe all the rules the States adopted to govern the right to vote, and the way these rules are applied.²⁵

The two requirements mentioned so far (minimum age, and citizenship) are generally the two main conditions for exercising the right to vote, but they could not be enough. The right to vote could, indeed, be restricted on the basis of additional legislative provisions concerning, for instance, some convicted people²⁶. These possible restrictions can affect both sides of participation right, i.e. on the side of expressing a choice (active), and of contesting and being elected in elections (passive)²⁷. In these cases it is matter of another, underlying and unexpressed, requirement: the person has not to be the subject of a restrictive, legal, provision. What is important here, is that the reasons for applying these additional rules not be discriminatory or unreasonable. This is why it is required that in the State Reports, the conditions under which such possible deprivations of the participatory right may take place are defined in a very clear and explicit way.

Therefore, the State Reports demand as well that the States give a description of the clauses through which they define the requirements and limitations for being elected to public offices, along with the legal basis and the procedures by which elected people can be removed from the office.

Beyond the ones mentioned in the Covenant, and repeated in the GC, no other limitations are possible. In particular, once the right to citizenship has been assessed, no other differences can be made between citizens: issues related to citizenship by birth or subsequently acquired by naturalization, however, make permissible that the rights in question can be enjoyed on a limited basis, for example the right to vote can be allowed only in case of local elections. The State Reports should therefore describe both, the rules that the State uses to govern the right to vote, and the way in which these rules are applied. But they should describe as well what are the possible reasons preventing citizens from exercising their right to vote and the measures that the states themselves have

23 See GC paragraph 3.

24 See GC paragraph 10.

25 See GC paragraph 13.

26 See GC paragraph 14.

27 See GC paragraph 15.

adopted to overcome those reasons.

Paragraphs 22 and 24 are even more detailed, and they are quite an index of the content of State Reports:

22. State reports should indicate what measures they have adopted to guarantee genuine, free and periodic elections and how their electoral system or systems guarantee and give effect to the free expression of the will of the electors. Reports should describe the electoral system and explain how the different political views in the community are represented in elected bodies. Reports should also describe the laws and procedures which ensure that the right to vote can in fact be freely exercised by all citizens and indicate how the secrecy, security and validity of the voting process are guaranteed by law. The practical implementation of these guarantees in the period covered by the report should be explained. [...]

24. States reports should describe the conditions for access to public service positions, any restrictions which apply and the processes for appointment, promotion, suspension and dismissal on removal from office as well as the judicial or other review mechanisms which apply to these processes. Reports should also indicate how the requirement for equal access is met, and whether affirmative measures have been introduced and, if so, to what extent.

The quoted paragraphs show the complexity of the electoral processes, and at the same time make evident how form and substance are intertwined. In order a reliable political result be obtained, a number of technical aspect have to be implemented because accountability is a constitutive element of the participation. To participate means, among other, to be informed about something, because it is not possible to be a part (*participate*) of a democratic political process, and not having a control of it. This is the rule of law, which is one of the essential aspects of the democracy: to have some public and shared rules which have to be respected, and which are essential parts of the same democratic (and participatory) process. Complying to the State Reports means, for the States, to be accountable not only on the international environment to the other States, but to their citizens too.

1.3 The International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Persons with Disabilities

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),

the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD) are three fundamental UN conventions where the issues of the political participation and the elections are dealt with in relation to some particular features of the rights bearers. From a strict logical perspective, it should be completely and redundant to re-state for such categories their participatory rights, as if they were not included in UDHR and ICCPR. However, given the daily discriminations some categories of people experience all over the world, it is important that the absolute equality in the enjoyment of rights is restated using different perspectives to qualify the human being as a rights bearer.

We will shortly comment on the three mentioned documents, attempting to extract some additional information, if any, about participatory rights, democracy and elections. At the same time this quick browsing can help to confirm how widespread the principles of participation and democracy are, and how, then, a customary law slowly went up.

Following the chronological order we start with ICERD, which is a convention entered into force on January the 4th 1969. The States party to the Convention, following the first paragraph of the art. 2 *undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races*. Article 5 paragraph C mentions the application of the ICERD to the political rights, and for this reason it overlaps somehow with ICCPR. The article says:

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: [...] (c) Political rights, in particular the right to participate in elections -to vote and to stand for election- on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

The echoes of UDHR and ICCPR are fairly evident, in particular the mention made to elections held on the basis of universal and equal suffrage. The reason of such emphasis on the universality and equality of the suffrage is clearly due to the topic of the Convention, the elimination of racial discrimination. Universality is the perfect opposite of the discrimination: it means inclusiveness, which is what the elimination of discriminations aims at. We can add that the Convention has entered into force in a historical period where forms of apartheid or racial tensions were well alive even in some democratic countries. Beyond that, it is of interest to note that after mentioning the political rights the text of the Convention shifts immediately to the participation to elections. In this

context it results a bit weird the use of the term *participate* referred to elections. We have already seen how in UDHR and in ICCPR *participation* and *elections* were differentiated with two distinct clauses, and we will see shortly after how CEDAW maintains the same differentiation. Here, however, things are different, maybe because the accent is really meant to be on the idea of participation and inclusiveness in all the decisional processes and, generally speaking, in the conduct of public affairs: so to write *participate to elections* is much more effective for the targeted aim. Finally, one more time we can see how the elections are in the first place when political and participatory rights are under analysis.

The CEDAW is a convention adopted in 1979 by the UN General Assembly. It entered into force as an international treaty on 3 September 1981 after the twentieth country had ratified it, and to date the signatories countries are 99 and the parties are 188. CEDAW consists of a preamble and 30 articles, defining what constitutes discrimination against women and setting up an agenda for national action to end such discrimination. In the first article of the Convention, the discrimination against the women is defined as:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

The reason why the CEDAW is shortly treated in this framework of political participation becomes clear since this first quotation, which refers to the political freedom as one of the fundamental freedoms which cannot be nullified or otherwise restricted on a gender basis. Here it is easily recognisable some echo of art. 25 of ICCPR, in particular that section where it is explicitly mentioned, referring to art. 2, the fact that no discrimination can be done on a gender basis. Therefore using a gender perspective CEDAW reaffirms that the political participation has to be open to all citizens. This tenet, just sketched in the art. 2, is better developed in the following art. 7, where it is said:

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies; (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

We can appreciate here, in order to guarantee a full equality between genders, an effort to determine which are the core elements characterising the political and the public life. All the evidences point to a same result: participation. This result emerges from the very wording of the article. Two out of three elements are introduced by “to participate”, meaning that, at the end of the day, what really matters is a complete involvement of the women in all the fields where the decisions can be taken: government policies, their implementation, public functions, non governmental and grass-root organisations. The third element are the elections or, more generally speaking, every tools able to make manifest the will of the citizens.

The first thing that can be easily noticed in this article is that we find in it the same distinction between a “take part” clause and an “elections” clause which we already noticed analysing the art. 21 of UDHR and art. 25 of ICCPR. The elections are the first element mentioned, are considered the simplest and more immediate way to be part of the decisional process, and to legitimise the political power taking care of the decisions. They are the most symbolic and visible aspect of participation, and at the same time the minimum element of democratic participation. The other listed forms of political and public life require a different and more time-consuming way to be practised, and not all citizens can be available to such kind of involvement. And this could be particularly true for women: let's think, for instance, to the situation of most of sub-Saharan Africa countries where most, if not all, of the activities for the sustain of the family are taken care of by women which, therefore, have no space for a real involvement in the participatory processes. So, in order this participation not to be only an abstract statement of principles, economic and cultural changes are required, to create a new background which very often is not easily feasible in countries of new democracy. The elections, then, have to be the first, minimal, step and the basic signal of a democratic life.

For the purpose of this thesis, what it is important here, however, are two considerations. The first one is that more and more elections are a key element in the political participation to be taken care of when drafting program of support to democratisation. This emphasis put again and again on the electoral process, even in a frame where are not at stake issues concerning democratisation, but where the focus is on the participation to the political life, it is useful to better understand the growing role the elections gained on the international political stage. And it is useful to understand as well the reason why the electoral observation activity gained momentum over the years in particular in the countries of new democracy. We will see in more detail in another section the role and the target of the electoral observation.

The other consideration is about the way to implement electoral activities, and to draw and promote

participation models and policies really capable to level the field and allow the effective participation of women. So for the States part of the CEDAW there is an obligation to actively implement initiatives targeted to improve and increase the participation and the involvement of women in the electoral process. So the *appropriate measures* which have to be taken are not general guidelines or abstract policies, but concrete activities such as, for example, political trainings exclusively drafted for women, or systems of quotas to guarantee the female representativeness.

The CRPD is the most recent amongst the three Conventions we are shortly analysing. The text was adopted on 13 December 2006, and opened for signature on 30 March 2007. It came into force on 3 May 2008 after the 20th party ratified it. So far, it has 158 signatories and 147 parties, including the European Union. The purpose of the Convention and the persons with disabilities targeted by this Convention are expressed the art. 1:

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

For the present purposes, the most relevant section is the article 29 where there are carefully detailed the initiatives required in order persons with disabilities be really in condition to take part to the political activity on a level of equality with all the other people. Even if it is fairly long, the article is worthy to be entirely quoted:

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:

(a) Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:

(i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;

(ii) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;

(iii) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;

(b) Promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:

(i) Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political

parties;

(ii) Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

Much more than the two previous Conventions, the CRDP indulges in details about the duties each State party has to comply with. Before any other further comment on this article, the first thing which deserves to be noticed is how it is clearly articulated in two main sections, paragraphs a and b, roughly corresponding to what we called “election clause” and “take part” clause. Each section has a same structure: a more abstract part where the general principle is established, and a more specific part where a fairly detailed list is presented of the fields where the States party have to engage in, in order to guarantee a real a complete enjoyment of the rights. Quite a number of the main elements of UDHR and ICCPR are present in the CRDP. So we find the idea to vote and to stand in elections which have to be held by secret ballot, which is a strict revival of UDHR and ICCPR, and without intimidation. This last point re-states, using a different word, the idea of *free* elections. It is however interesting this word change because it could mean, as we will try to argue in the last section, that the definition *free and fair* is less and less able to intercept the complexity of an electoral process. So, for the time being, we will limit to notice this change.

More or less the same way the CEDAW does, the CRDP lists of the fields where the State party has to intervene, helps to better determine what political participation and elections mean, and what are the clue elements of these concepts. But if for the elections, beyond the one just noticed, no particular and new elements are offered, participation is, instead, better defined. So, the participation in public affairs is to participate to non-governmental organisations and to all kind of associations which have an impact on the public life of the country, and to participate to the life of the political parties. On top of this, for people with disabilities *to participate* means the possibility to form on local, national and international level associations which can represent and promote their own interest as persons with disabilities. It is interesting to notice that this time, and for the first time, the engagement of the State Parties is pushed beyond their borders to encompass the international stage. This could be read as an implicit acknowledgement of the fact that the border of single state are not any more a space big enough to contain the rights of the individuals.

All three the documents, in comparison to the two main (namely UDHR and ICCPR), appear to be far more prescriptive concerning the involvement of racial minorities, women and persons with disabilities and less, say, theoretical. The common theoretical basis of all of them is clearly recognisable in the art. 2 of the UDHR and of ICCPR where is said that all the rights have to be enjoyed by all the people without any kind of distinction based on a status whatsoever. So that, strictly referring to participatory rights, the three Conventions could appear redundant because they are re-stating

from different perspectives something already acquired in other tools for the whole mankind. However they are more programmatic and they describe more in detail practical policies, measures and initiatives to be taken, or concrete principles to be followed. This helps to better define the real content of the prescriptions set in the more general documents.

2 A few theoretical issues

The issues we are dealing with in this work, namely democracy, participation, elections, are not exempt from theoretical difficulties and critics, as well as the human rights as a whole system are exposed to critics questioning their foundation and their general validity. It is therefore not possible to go any further here without briefly treating them, starting from the issues concerning the human rights as a system and going on with some critical aspects regarding the specific points we are dealing here.

2.1 Critical points concerning Human Rights as a whole

Roughly speaking we can identify two different kind of critics: internal and external. By *external* I mean the critics defying the human rights seen as a corpus of rights expression of the western culture and tradition; whilst I define *internal* all the critics which come from the same western cultural matrix, and which question their consistence from inside. The line separating these two types of critics is not always so neat, and it can happen to find a same argument used in both cases. This can be the case, for instance, of the question concerning the universal validity of the human rights; or of the critics accusing the human rights of being a basically reactionary tool aiming to maintain unchanged a capitalistic *status quo*. But even if the arguments seem to be the same, and seem to share a common critical kernel, different is their perspective and the proposed distinction maintains, in my opinion, its own methodological validity.

2.1.1 External critics

One of the necessary characteristics of the human rights is their universality: it is not possible to imagine a human right enjoyed only by some people; or refused only to a single person or a group of individuals; or protected only in some areas of the world and not in others. This universality is inscribed in the human rights DNA, and if all human beings *are born free and equal in dignity and rights*, there is no way to imagine or to accept any kind of differentiation whatsoever in acknowledging them the rights. If the human rights are thinkable, they must be universal, otherwise they would develop a destructive internal inconsistency. So that, using the words of Mutua, *human rights are imprisoned in universality*²⁸.

At a first level the universality has at least a couple of problems. The first one is that the universality is far from being a natural event, as the human rights would make to believe. It is rather the ex-

28 Mutua, Makau. 2009. p. 901.

ception and not the rule. Therefore, to affirm the universality of something, even of the human rights, requires some kind of explanation, a rational or philosophical foundation. The international tools do not provide the human rights with such explanation.

Moreover, as it has been noticed by de Sousa Santos, *the question of universality is a particular question, a Western cultural question*²⁹, because even though all cultures tend to define ultimate values as the most widespread, only the Western culture tends to focus on universality. So, this same idea bears an internal contradiction: is the question about the universality which is not universal. The same western seal is recognisable when we think or we speak about a universal human nature acknowledgeable by rational means, the absolute and individual dignity to be defended against the State, a society as a sum of free individuals. All of these are clearly Western and liberal presuppositions, which can easily be distinguished from the conceptions of human dignity other cultures have.

Beside, the inner difficulty of the idea of universality, there are some problems related to the universality of the human rights as well. A first problem has been raised from many scholars, simply noticing as the same UDHR of 1948 has been drafted without the participation of the majority of the peoples of the world. So even if many of the ideas present in the human rights corpus are present in, or could have strong analogies with, a lot of cultures and traditions other than the Western one, this last one remains strongly prevailing for language and content. And it is just the language the human rights are expressed through, undeniably western, which creates further difficulties to their universality. The language is not only a linguistic matter, but is a matter of the culture which creates it, and the concepts it conveys. The language is made to express the reality experienced by the people using that language. So when we say that the human rights are expressed through a western language, we are saying that they mainly express the reality underlying the language. To be still more clear it is strongly suggested some sort of identification between the human right system and the liberal and democratic Western political tradition which originates the language.

One of the characteristic of the liberal tradition, rooted in the Greek and Christian culture, is the importance given to the individual. The historical incarnation of Christ put the individual as the centre of the cosmological construction; while the linear vision of the history (one single life in this world and no reincarnation) made the life a unique timespan where the individual has to realize his or her potential. On this backbone the liberal tradition built its doctrine using as a base the formal autonomy and the abstract equality of the individuals, as well as the theory of the State as the guarantor of the rights of the individuals in exchange of a few concessions made to it. In the society built upon these principles the individual gives the State some of its freedoms keeping, however,

29 De Sousa Santos, Bonaventura. 2009. p. 104

the right to rebellion if the social contract is broken by the State; and keeping his own irreducible space of liberty. Every single individual has, then, some inviolable and inalienable rights which, however, are clearly historically and socially constructed, and are far to be natural and / or universal. The modern democratic tradition stems from the liberal doctrine, and the human rights system is the more mature expression of such a development.

So if we recognise that universality is a constitutive element of the human rights; that the universality, as such, is a western worry; and that, as we will see³⁰, the conceptual content of the universality is a product of the western culture; then we need to de-construct this idea and to reshape it in cross-cultural terms. This means a necessary effort to take in account different visions of the world, the human, the ethical and the political world. And this has to be done not only in substantial terms, but in terminological and linguistic terms as well. As long as the human rights are willing to remain universal (in a non-western meaning) they must be (and must be perceived too) as a global construction. And if we want that this new idea of universality to be shared by all persons, we have to reconstruct it not as an ideology stem from a mainstream culture, but with a bottom-up participatory approach. It is the same narrative of the human rights in need to be restructured in order to be perceived as an emancipatory doctrine and not as a form of new colonialism. The universality of the human rights has to be cultural, and it has not to be seen as a foreign form of legal imposition, due to the fact that the same language of the rights is a Western way. This new way has to be built in the inter-cultural dialogue.

Another critical point, always stemming from the liberal tradition, seems to be the fundamental importance given to individual rights. Historically in the European tradition the society is assumed as the sum of the free individuals which organise themselves in order to get goals, which otherwise would be unreachable³¹. So the society and the State are seen as structures functional to the individual's goals to be achieved; and at the same time as possible threat to the individual freedom, and a potential source of abuse the individuals need to be protected from. All is, then, built around the individual.

But, interestingly, the same notion of *individual* can be problematic if it is stared at, from a non Western perspective. Panikkar distinguishes between individual and person³². He considers the individual as an abstraction, *a selection of a few aspects of the person for practical purposes*. He seems to consider the *person* as a better word to define the human being in the complexity of his personality, his purposes, his social role. *Individual* becomes then just a partial vision of this more complex

30 See below paragraph 3.1.2

31 See Panikkar, R. 1982 p.82.

32 Panikkar, Raymond. 1982. p.90.

structure; as such the individual is only an isolated knot, while the person is the *entire fabric around the knot*. In such a different interpretation, a too aggressive defence of the individual rights could have, as a side effect, to damage a part, or the whole, of the fabric to knot belong to, and in this way the same person supposed to protect. Macau Mutua explains in very plain words the real current situation:

For Africa, it essential to recognize that communities and collectives are an integral part of the social reality. As such, the individualist focus of the human rights corpus must be tempered with communalist or group oriented approaches if human rights prescriptions are going to enjoy any legitimacy on the continent.³³

In other words a too strong emphasis on the *individual* as the focus of the rights overshadows the paramount importance the community has in other cultures.

So, if the Western cultures expresses itself in terms of *individual* instead of *person*, this choice affects the entire political construction.

If the role of the individual is so prominent, and the human rights are so deeply rooted in the Western liberal tradition, the link between them and the democracy -funded upon the *individual*- becomes natural and consequent. So, some scholars³⁴ can affirm that political democracy is the moral expression of the human right because it embodies the type of political regime characterised by the very procedural attributes required by the human rights. If we translate these point in political situations, the result is that a political democracy, as such, passes the human rights test for meeting the basic normative and institutional requirements for that typology of government³⁵. In still more explicit words the UDHR appears to sanction political democracy as the presumptive choice of the human right corpus. But it is a democracy which is, since the beginning, shaped around a focal subject already culturally defined as *individual*, and not as *person*. As such, it is a democracy which takes as granted its focal subject, and, therefore, can leave aside its substantive aspect, and focus only on the procedural matters. So, if it is true that democracy is also a matter of rule of law and respect of the procedures, it cannot be *only* a matter of procedures, but has to show some substantive contents, which in other cultures can be obtained following different paths.

Grounded as it is, this last critic is a little ungenerous. It focuses its argument on factual observations, which is not *per se* wrong. However it is too easy to criticise a doctrine whatsoever just pointing to its effective implementation which is forcefully defective just as it is every human realization. The fact that in maybe too many cases the formal aspect of the democracy wins over the factual

33 Mutua, Makau. 2009. p. 899.

34 Mutua, Makau. 2009. p. 903.

35 Mutua, Makau. 2009. p. 907.

realisation cannot obscure the true aspiration of the democracy to be effective as to its final goal: to have a system of government which guarantees the best balance between individual and social interest. Therefore it cannot be criticised, from this point of view, the democracy in itself, but only the way it is implemented. That is a completely different aspect.

Moreover I do not agree with Mutua when he says that the possible different forms of democracy (and he mentions presidential system, parliamentary system, or different electoral systems) can all be iterations of what is known as political democracy. I think that it is possible, anyway, to ask ourselves, maybe using what Panikkar called diatopical hermeneutics³⁶ or a cross cultural approach, the question if the will of the people can be correctly expressed in other forms able to guarantee in a different cultural context the same outcome. In other words what I think is that we could stretch the usual -western- meaning of democracy in order to make it include some *unorthodox* ways to express the popular will or to get a political system which best fit to the aspirations of a given society. Again what I attempt is to try to detach the democracy from a *fundamentalist* interpretation to allow a less literal interpretation of it. Try to stick to the concept, and to the ideas the human right system tries to promote, and not to stick to a literal interpretation which forcefully becomes non resilient, and which creates a clear cut distinction between good and evil forgetting all the shadows in between. The democracy and the human rights have to be substantive, and therefore not to be evaluated in their formal aspects, but through the results they can show.

2.1.2 Internal critics³⁷

Even for what we defined as the internal critic the universality of the human rights, which is one of their necessary characteristics, is a source of doubts and difficulties.

When we say *universal* we use a term which *per se* is not ambiguous but which, however, can refer to many aspects of the concept it is accompanied to. To remain to the case of the human rights, universality can be rooted in their origin: to recognise, or better to prove, that they are founded on some natural or metaphysical principle which is accepted by all the people, can justify their validity for all, irrespective of contingencies related to time and place. But if this kind of justification was considered sufficient for founding the right in the middle age and at the beginning of the modern era, in the XVIII century the enlightenment criticism destroyed the close connection between rights and metaphysical values, moving the accent on the new founding role of the human Reason. Unfortunately the human Reason showed not able to survive to its own evolution and, at a later stage,

36 Panikkar, Raymond 1982). p.76. On the same concept see also De Sousa Santos, Bonaventura. 2009. In particular p. 108.

37 For the exposition of what I called internal critics I will mainly relay on the works of Bowring 2008 and Douzinas.

Horkheimer and Adorno³⁸ argued that the Reason set as the foundation of the new era manifested an internal self-destructive dialectic which destroyed all the gains of the previous centuries. If, then, the same Reason is incapable of creating a linear path of progress, but it is herself exposed to regressive historical phenomena, there is no possibility for the human rights to gain their universality through a foundation on a principle, the human Reason, unable to last the exam of the historical events.

If the human rights universality cannot be based on some founding principle, the same happens if we try to found the universality on some sort of geographical extension. We have already seen in the previous section how many difficulties can be connected to the notion of universal as linked to some kind of geographical interpretation. We saw there, how even the very idea of *universality* is not geographically universal but it is limited, and so how difficult can be to attribute a geographical universality to human rights. What then, if we consider the universality in quantitative terms? What if instead of considering the human rights valid all over the world, we try to extend them to all the men? In order to achieve this result the classical doctrine says that the human rights belong to the man *qua* man. This means that in order to be a subject of these rights a human being doesn't need any other connotation whatsoever: just being a man, or a woman, entitles her or him. To put it in Platonic terms, we can say that there is an idea of man owning these fundamental rights; and that in so far as an entity participate of this idea, well this entity is a man and owns all the characters, included these rights, the idea is made of. Then the human rights belong to this common characteristic shared by all the men, and as such they are universal. This is not the right place to determine which are the characteristics defining this idea of man, namely the exact content of this core definition. However just to think about a foetus, or a person in a deep and irreversible coma, can give a rough idea of how difficult can be to find a point of agreement, a shared opinion of what is the content of this core definition.

So this kind of quantitative explanation seems to raise more problems than it solves. First of all the Marxist critic objects that this way the real men are turned in abstract characters. Human rights have been conceived to improve the real life of concrete people, living somewhere and in a determined historical period. For this reason if we consider such universal -and abstract- idea we miss a crucial point. And, on top of this, such abstraction become a support to a conservative political operation aimed to the affirmation of the ruling class³⁹.

38 Horkheimer, Max, e Theodor W. Adorno. 2010.

39 See Marx: On *The Jewish Question* "Above all, we note the fact that the so-called rights of man, the *droits de l'homme* as distinct from the *droits du citoyen*, are nothing but the rights of a *member of civil society* – i.e., the rights of egoistic man, of man separated from other men and from the community." <https://www.marxists.org/archive/marx/works/1844/jewish-question/>

Moreover some other scholars⁴⁰ simply think that there are no rights attached to the human being *qua* human being. To assume a right, whatever it is, as belonging to man as such means to give him some pre-political rights. But it is hard to imagine a right without a political environment able to enforce it, without a political community which recognise it, which is not the case of the man *qua* man. As it has been shown by Agamben⁴¹, and by Arendt before him⁴², fault of a political environment we can find a *bare* man (the man *qua* man) which is completely naked of rights. It is what happened in the Nazi period in the concentration camps. In that right moment the inmates entered this geographical space, completely devoid of political structures and institutions, they loose any kind of right. They were transformed in bare human being because in the concentration camp they kept not even their physical body, but just their physiological life, a naked, bare, life. So, outside the social and the political space, or in a physical space devoid of whatever social or political structure, only the bare life can have some sort of acknowledgement; whilst the moral values, and with them any possible right linked to the moral sphere of the human being, cannot have any kind of acknowledgement. Then the result of this transformation of the inmates of the concentration camps in *bare* men was that, along with their right, the inmates loose their humanity, becoming *homini sacri* simulacrum of humanity, the victims of the negation of the rights.

Thus, paradoxically with respect to the classic vision of the human rights, in the very moment the individual is brought back to the condition of human in general, namely in the moment the man *qua* man appears, or tries to historically exist, the deprivation of the rights and, what is still worst, the disappearance of the humanity took place.

So, the human rights seem to be something that cannot be located outside a political context. This means not only that there has to be, behind the human rights, an idea of citizenship or political belonging; it is, moreover, necessary a political space where to make these rights enjoyable and an historical context which can make them real.

The problem is now that in the current historical context an irreconcilable contradiction seems to exist between the universal enjoyment that human rights are supposed to have, and the real opportunities to effectively enjoy them that the current system provides. Better said, what we are witnessing in the period following the UDHR and the Covenants is the spreading of the principle and of the emphasis on the respect of human rights, not really followed by a similar spreading of their practice. We have huge areas of the world where, even if the countries signed all the relevant human rights tools, however the people is very far from having their rights really respected, and where the people

40 See the review of McIntyre theory mad by Bowring in Bowring 2008 p. 122.

41 Agamben, Giorgio. 2005.

42 Arendt, Hannah. 2009.

are very far from minimal acceptable social, political and economic standard of living.

In order to cope with such kind of critic it is not enough, this time, just to say that the problem lies only in a bad realisation of the theory. The problem seems rather to lie in the theory which favours political and civil rights. Doing so, it appears to privilege the protection of the individual from the possible State's abuses, leaving in the background the safeguard of the individual from the possible abuses which can be suffered by the hand of other individuals. The problems we are facing here, then, sometimes stem from a clearly abusive role of the State, some others from a kind of laziness of some States in making truly respected the human rights. But social and economics inequalities, caused by some heavy distortion of the capitalistic system, are a strong source of the violation of the human rights, and a primary source for making useless or ineffective all the protections the civil and political rights can guarantee. Therefore, in cases where the source of the violations is not the State, but the individual protected by an accomplice State, the kind of equality expressed by civil and political rights is a sort of ideological construction because it is ineffective (at least in the short or medium run) to cope with material inequalities, poverty and destitution. The problem is then not only the possible abusiveness of the State, but the real and concrete exploitation exerted by the man on the other men. This is why there are civil and political rights, but economic, social and cultural as well; and why all of them are necessary and interlinked. The simple and abstract equality provided by civil and political rights alone can often be ineffective, and it can even produce a short run worsening of the human relationships⁴³. The equality expressed by social and civil rights is more an abstract and mathematical equality which could be considered sufficient if we believe that the State is the only source of potential abuses toward the individuals. But it is not enough if we consider the individuals as a potential source of abuse: there are blatant power asymmetries among individuals, and if we really target a substantive equality between them we cannot pretend to ignore such a situation. Expressed in Marxists terms:

Right, by its very nature, can consist only in the application of an equal standard; but unequal individuals (and they would not be different individuals if they were not unequal) are measurable only by an equal standard insofar as they are brought under an equal point of view, are taken from one definite side only [...]. Thus, with an equal performance of labor, and hence an equal in the social consumption fund, one will in fact receive more than another, one will be richer than another, and so on. To avoid all these defects, right, instead of being equal, would have to be unequal.⁴⁴

In other words all the individuals should be in the same conditions with respect to economic and social possibilities. This is the reason why the human rights, considered from this perspective, are conservative and basically do not fulfil their goal to improve the life of all people. Human rights are

⁴³ See Douzinas, Costas. 2010. p. 84.

⁴⁴ Marx, Karl. 1875. *Critique of the Gotha Programme*, <https://www.marxists.org/archive/marx/works/1875/gotha/ch01.htm>

invested with content and regain their significance through social struggles.

The core of this kind of critics is very well summarised by Badiou⁴⁵:

Under the pretext of not accepting Evil, we end up making believe that we have, if not the Good, at least the best possible state of affairs ... The refrain of 'human rights' is nothing other than the ideology of modern liberal capitalism. We won't massacre you, we won't torture you in caves, so keep quiet and worship the golden calf. As for those who don't want to worship it ... there's always the American army ... to make them be quiet.

Badiou thinks that the human rights are a part and parcel of the ideology of liberal humanitarianism and the law of the global market, which appears to have triumphed following the failure of the revolutionary project of Marxism⁴⁶.

Through the process of universalization, the social and political institutions are made to seem impartial and inclusive, taking out of them the suspicion of all possible bias towards the class interest, which usually corresponds to the interest of the capital.⁴⁷ The Marxist critics stress in particular the role the human rights have in substantially defend the socio-political status quo. This defence of the status quo, in the best case scenario means that the human rights work only for betterment within the confines imposed by capitalism, and this would destroy them because of the internal contradictions of the capitalistic system. The contradiction is mainly due to the fact that the liberalism, seen as the political counterpart of the capitalistic system, *de facto* is a politics of elites, and it is far from guaranteeing the real and effective participation of all the people to the decisional processes⁴⁸.

Even if there are both civil and political human rights, and economic, social and cultural rights these last ones are defined as programmatic, so that their realisation is not compulsory, as it happens for the others, but postponed to a next future not easy to identify. On the contrary the human rights, as a critic to the current state of things, have to keep a revolutionary content. So the more they are universalised, then made abstract and not historically defined, the more they tend to loose their revolutionary potential.

A substantive account of the human rights has to be built, where "substantive" has to be understood in Aristotelian terms as a denial of empty cognitive forms, and an affirmation of a concrete realisation of a political project. To say it with Bowring⁴⁹, human rights are real, and provide a ground for judgement, to the extent that they are understood in their historical context, and as, and to the extent to which, they embody and define the content of real human struggles. That is also the meaning of the doctrine of the UN's Vienna World Conference on human rights in 1993, that all three genera-

45 Quoted at p. 121-122 by Bowring, Bill. 2008.

46 See Bowring, Bill. 2008. p. 120.

47 See Bowring, Bill. 2008. p. 100.

48 See Bowring, Bill. 2008. p. 115.

49 See Bowring, Bill. 2008. p. 129.

tions of human rights are indivisible.

A substantive approach is a bottom – up approach, which starts with human rights as used in our actual social life by politicians, lawyers, social campaigners, as well as theorists of various sorts, and then sees what higher principles one must resort to in order to explain their moral weight. So the human rights talk is not the meaningless rhetoric of the powerful and the oppressor, but it becomes something real when articulating the present, not the endlessly deferred, claims of the oppressed.

Moreover, a theory of human rights completely relying on governments and international institutions represents some sort of challenge to their *raison d'être* which was to defend and protect the people from these very kind of institutional powers. So this bottom-up approach becomes essential and strategic to give the human rights their true dimension.

Do these critics mean that human rights are invalid due to internal contradictions or due to cross cultural critics? My opinion is that they are not invalidated. Of course they have to be re-shaped, but they can take advantage of this opportunity for enlarging their own realm through a mutual fecundation with other conceptions of the men and of the reality. The same “no”, I think, has to be answered to the question if we have to renounce to declare or enforce the human rights. However this answer has to be qualified and set in an appropriate context. We have to take note that some way the Western culture has been able to export some economic and political models; and therefore the human rights, another Western production, has to be proposed as a model for counteract the negative effects the first “exportation” caused. In any case space has to be left to other traditions to develop and adapt an endogenous, Panikkar would call it *homeomorphic*, conception of the rights. Space has to be left as well as to the possibility to adapt and re-shape a narrative of the human rights which could be able to both include the different visions of other cultures and at the same time be able to explain or justify the blatant contradictions that the current political practices show daily to our eyes.

2.2 The right to political participation

The human rights system puts the rights of the individuals as the cornerstone sustaining its entire structure. For this reason all the human rights represent a challenge to the traditional notion of state

sovereignty, and the participation right is unexceptional from this point of view. The right to participate is, however, peculiar in comparison to the other rights stated in the ICCPR, because it doesn't only imply specific limitations of the state sovereignty in some given domains, but it questions the very fundamental issue of the source of the sovereign authority within a state.⁵⁰ In other words it raises issues concerning the legitimacy of the power and of authority ruling a state, which is an unprecedented intrusion into the political life of the states.

Based on the UDHR, the will of the people has to be the foundation of the power, and therefore the only legitimising authority. There is no dissent today about the fundamental principle that the will of the people is the sole basis for the authority of government, or that such will is to be expressed and accepted by way of periodic, genuine, free and fair elections, conducted on the basis of universal, equal and secret suffrage⁵¹. The citizens are then the ultimate source of the internal legitimacy of the government, and this domestic legitimacy has to be the basis for the international recognition. This popular will can be manifested, expressed and realised through the political participation whose most popular exercise, but not the only one, are the elections. This new focus on the will of the people entails a complete reversal of the traditional political vision, which accepts the principle that a legitimate ruler can be whoever follows on a line of dynastic succession, or doesn't matter who and irrespective of the way the political power had be taken. Now the only acceptable way to get the power and be recognised on the international scene is to be chosen, elected, by the popular will.

The very fact that the participation right is the right on which it is founded the legitimated authority creates a kind of double layer for the human rights: on one hand we have all the others human rights, for which the state has the very definite role to take the right measures in order they to be realised. It can be done taking negative or positive measures, namely eliminating the obstacles to their realisation, or creating a favourable ground for the right to be fully enjoyed in a progressive and evolutionary manner. On the other hand we have the right to participate. This right too, as it happens for the others, requires the state authority to take the initiative, to promote and realise positive measures to make possible a real participation. This can happen, for instance, thorough the organisation of free and fair elections, and through the creation of the conditions for the political participation in the broadest possible sense. But doing so, the state authority recognises that it must also subordinate its own authority to an ongoing process of validation which, worst case scenario, could de-legitimise it. Put in simpler terms, the acknowledgement of the right to participate has the power to question and destroy that very same authority which is called to make this right implemen-

50 Fox, Gregory H. 1992. p. 544.

51 Goodwin-Gill, Guy S. 2006. p. 75.

ted. The only way the ruling power has, to make the participation right respected, is exactly through questioning its own legitimacy. Therefore the duty to create the conditions for the right to be enjoyed, has as a side effect to compel the state power to step back and leave an empty space where another power, of an higher level, takes the control and decide who has to be the ruler.

This situation involves at least two relevant consequences. One is that for the first time we seem to face a criterion of legitimacy which is, at the same time, internal and external. In the traditional political vision the international recognition of a government was not linked to any kind of domestic popular consent. This traditional vision entails that there were no explicit rules governing the nature and the origin of power. In the modern era the duty of the legal staff of a sovereign was to find *a posteriori* the historical reasons to legitimize the right of the king to rule over a territory. At the level of international relations it was accepted a *de facto* situation of an authority ruling a State without questioning the way the power had been taken⁵². The individuals, besides a few exceptions, were not at all recognised as right bearers in international relations, and only the States had such recognition. Therefore in such an historical context, the right of an individual to participate to the domestic political life, if recognised at all, couldn't have served as basis to legitimise the exercise of the power in front of the other international actors.

Moreover for most of the recent history “the international law of recognition has paid little or no attention to the manner the regimes are chosen” so that, roughly speaking, a legitimate ruler was the one *de facto* in control of a country, or the person following a line of dynastic succession. As the German jurist Oppenheim wrote:

the Law of Nations prescribes no rules as regards the kind of head a State may have. Every State is, naturally, independent regarding this point, possessing the faculty of adopting any Constitution according to its discretion⁵³.

Now we have, instead, a completely new system, where the international community is committed to recognise as legitimate a government when it is able to show that its own entitlement to govern derives from the popular authority. At the same time the international law is now asked to address issues of governance traditionally the exclusive province of national constitutional law.⁵⁴

In the past centuries the non interference principle in the domestic affairs of a nation, some way restated in the art. 2 paragraph 7 of the UN Charter, had left the question of the legitimacy as an internal affair. The development of the human rights system made this issue to shift from the domestic domain to the international one. It was not possible any more to ignore the problem of the legitim-

52 “In sum, the central tenets of recognition law have never turned on judgements about the domestic legitimacy of governments”. Fox, Gregory H. 1992. p. 549.

53 Quotation extracted from: Fox, Gregory H. 1992. p. 549.

54 Fox, Gregory H. 2000. p. 90.

acy of a government once the UDHR started having a binding value⁵⁵. Once set a standard, it will be therefore a task of the international community to make it implemented and, then, to make the membership of the international forum subject to the compliance with the new rules.

It is, then, only after 1948 - namely after the new rules of the human right system started their way to become an international standard - that the recognition of legitimacy, sort of democratic rule, started being set on the basis for the acceptance in the international community. So we have witnessed a shift: the States are not any more the centre of the political international scene, they are not the only recognised players, and their role is taken over by the individuals; and the right of individuals becomes the right upon which to build the frame of political -national and international- relations:

... logical consequence of adopting popular sovereignty as a principle of international law is to subvert, in whole or in part, the presumption that all regimes are competent to act on behalf of the states they govern ... A regime's competence would instead depend on its democratic bona fides⁵⁶.

And it was only after 1989, namely after the fall of the Berlin wall, that the international community started systematic efforts to give the participation rights a content and a meaning through four main kind of activities: election monitoring, supervision of cease-fires in civil conflicts, recognition of new states and governments, expanding jurisdiction of the security council.⁵⁷

Therefore the emphasis the UDHR put on the democratic procedures, and the progressive acceptance of the democratic rule, made relevant for the international community the way the power has been taken: the legitimization's question stopped being a simple domestic matter and became an element of international judgement. The right to participate, the *democratic entitlement*⁵⁸, involves then a radical change in the traditional vision of the power. The drawing of a proper process legitimising the exercise of authority creates a threshold of legitimacy which must be met by all the national governments, and it engenders a commitment of all the states to adhere to this rule in their international relations. As a matter of fact the participatory rights demand to the political regimes to re-structure themselves from the ground.

The art. 25 of ICCPR is the most invoked source of legitimacy for the democratic, or better, the participatory entitlement. Therefore the effect of the art. 25 and of the art. 21 of UDHR is to internationalise the choice of the legitimate government what, before the UDHR, had been kept as a ques-

55 See Zanghì, Claudio. 2006. p. 145: "... la Dichiarazione Universale, pur essendo sorta come un atto meramente dichiaratorio, ha acquisito ormai forza obbligatoria ed i diritti umani nella stessa contenuti vengono ritenuti quelli evocati nello Statuto ONU al cui rispetto tutti gli Stati membri sono obbligati per il solo fatto di essere membri dell'Organizzazione ed a prescindere, quindi, dall'aver ratificato i Patti o altri strumenti internazionali in materia di diritti umani."

56 Fox, Gregory H. 2000. p. 83.

57 Fox, Gregory H. 2000 p. 85 and followings.

58 Fox, Gregory H. 2000. p. 78.

tion to be solved inside the borders of a State. In this way it is not possible any more to claim the principle of the internal sovereignty: the signature of the ICCPR (and of the others international instruments on human rights) implies the national sovereignty to be subject to compulsory limits, mainly due to the shifting of political subjectivity from the state to the individuals.

The question which now arises is, then, if the international community can effectively promote a right that requires substantial or complete overhaul of a state's political institutions⁵⁹. And of course the answer cannot be but positive, even if a strong political will is required to this purpose; and even if the affirmative creation of institutions associated with representative government is needed too. These institutions must be legally autonomous bodies and not mere appendages of a ruling party⁶⁰. Moreover these institutions, in order the rights be fully enjoyable, must have some kind of authority to make the rules be respected. All the rights must have a level of enforceability, and the super-national institutions require, for this reason, a power to accomplish their duty.

The question finally becomes if and how these international institution can have this power; if the States are available to transfer their power to international institutions; and, finally, what is the allowed use of this power. In other words: in case the participation rights are not respected, what is the acceptable kind of international intervention: economic embargo, political sanctions, sustain to opposition parties?

This completely new situation creates an apparent conflict between the UN Charter and the provisions made under art. 21 of UDHR and art. 25 of ICCPR. On one side we have the principle of non interference in domestic affairs and the respect of the universal norms set by the UN Charter which implies the full autonomy of a State in its internal affairs. On the other side we have the principle setting the will of the people as the source of legitimacy of the political power. This implies that the internal, and therefore the international, legitimacy is based on the individuals; and that if there is a so powerful player which can legitimise a political entity on the international stage, then this player has to have an international recognition as the main political actor. In this way the paramount importance the individual acquired, has to put him well beyond the right to a State to not receive external pressures if any of the rights of this new player is questioned.

There could be at least two ways to re-conciliate this apparent contradiction. One is to recognise that the legitimacy of the power stopped being a domestic issue and it is now a an international question. The very fact that on the international stage too the right bearer is now the individual changes from the ground any previous traditional vision. This shift becomes possible because the international community chose to give itself new binding rules. But, most of all, because the inter-

59 Fox, Gregory H. 2000. p. 90.

60 Fox, Gregory H. 2000. p. 91.

national community decided the individual has to be the core, the focus, of the entire legal structure ruling the international relations. Once the individual become the main player, suddenly the traditional space of the nation-state become insufficient. If the individual owns fundamental rights this means that there is no local political power allowed to restrict these rights; and that there must be a superior instance whose task is to make these rights respected no matter where and when in the world. This situation, translated in political terms, means that a superior, international, instance has to be set to guarantee the respect of these rights and that, among other things, this instance must have the authority to assess and verify the legitimacy of a domestic government. So the old form of state-nation has to restrict substantially its own domain in favour of the international institutions. The non interference principle, then, can concern only a subset of situations not related to human rights.

Another possible solution to such a conflict, not far from the previous one, could be found in the last few lines of the art. 2 paragraph 7 of the UN Charter where it is written that the non-interference in matters of domestic jurisdiction shall not prejudice the application of enforcement measures under Chapter VII.

There are, then, situations where it is possible not to stick to the non interference principle, and this happens, following the word of art. 39 of UN Chart, when there is a *threat to the peace, breach of the peace, or act of aggression*. Therefore, if we admit that lack of participation contributes to the political instability or, at least, that the lack of participation is a potential threat to the international stability and to the peace, we can bridge the gap among the international instruments. And the same could be perhaps said if any of the other human rights is not respected.

This last possible explanation seems to find confirmation in what Foradori writes when he identifies five main reasons explaining the growing UN interest in promoting democracy⁶¹. One of them is that democracy is more and more considered an effective tool for conflict prevention; and another one is that UN is more and more convinced that democracy is functional to peace. And this is precisely one of the point stressed by Boutros-Ghali in its *Agenda for Democratisation*⁶².

All this bring us to the second point. A government is legitimate if is founded on the popular will: therefore there has to be a way to assess if and how a government respected this rule. In other way there has to be a way for the government to prove its own legitimisation, namely the fact of being the result of the popular will duly expressed or, put in another way, that the popular will is truly represented by the ruling authorities. The question at stake is the assessment of the truthfulness of the

61 Foradori. 2007. In particular p. 91. We use here *democracy* as a synonymous of *participation right*. This is a rough approximation, as will be explained later on in this thesis.

62 See, for instance, paragraph 64: "The process of democratization internationally can therefore help promote peaceful relations among States."

representation. We are, this way, transported from a political field to a procedural one: we need to find a clear cut, verifiable, procedure to determine under which (technical) circumstances we can consider the outcome of a political process a true and faithful representation of the popular will. This means that the procedure is not only a technical instance but it has a political meaning. To use the words of Fox:

The democratic entitlement involves an elaborate system of procedural rules, changes in any one of which may affect the character and even outcome of an election. Until recently the construction of such systems remained the exclusive province of national constitutional law. Now, the international community must make difficult choices among the various national systems in order to develop its own model, and it must do so without the supporting framework of any particular state's culture or history.⁶³

And there is still more. The participation right becomes an instrumental right in order to create procedures which make the issue of the legitimacy of power a legal matter instead of a political one. A flawed electoral process causes legally flawed results, which means that the outcome of the process of choice (the electoral process) does not reflect any more the popular will. Shifting to this procedural aspect implies that the democratic legitimacy is established in legal terms: the failure to follow precise electoral rules and norms can raise a presumption that international laws have been breached and it can create suspicions of illegality with possible heavy consequences. For instance the international community can refuse to recognise a government⁶⁴, and by doing so can take some political and economic measures to pressure the illegal government to step back. An example of economic pressures can be the suspension, in case of illegitimate government, of the foreign aid. For instance, referring to Mali situation, because of the putsch of 2012 the EU decided to suspend its development aid to the country. The situation of illegality in Mali was very clear: the power had been seized by the army in a violent way and no popular consent was supporting it, but regardless of the way the power has been taken, as long as there is no popular legitimacy -as it could happen with rigged elections- the same outcome could follow.

The question is now how far we can go along this line: could a situation of illegality be the basis for what is called humanitarian intervention? If a government is not legitimised by the popular will has it to be sanctioned with foreign, international, actions and pressures? Here the situation is highly debated, and we cannot go in depth of this issue. But it should be enough to notice that there are some scholars sustaining that when a power is in charge without the popular legitimacy any foreign intervention to remove the regime is not breaching the state sovereignty:

⁶³ Fox, Gregory H. 2000. p. 79.

⁶⁴ It is what happened, for instance, after the 2012 military coup in Mali. The suspension in this case was not the outcome of flawed elections, but for the sake of the current argument we could consider the events as similar. We can assume that the simple assessment that the new government was not the expression of the popular will (no matter if rigged elections or coup) is more than enough to go on with the political sanctions.

When those confirmed wishes are ignored by a local caudillo who either takes power himself or assigns it to a subordinate he controls, a jurist rooted in the late twentieth century can hardly say that an invasion by outside forces to remove the caudillo and install the elected government is a violation of national sovereignty.⁶⁵

Here the argument of the popular legitimacy is brought to the extreme, maybe in order to justify some aspects of the US policy of the Bush period. An invasion could not be a violation of the national sovereignty, but it violates for sure half a dozen of others equally compelling international laws. Other scholars sustain that in most cases of tyranny the citizens have a right to rebellion, but they are the only ones allowed, as they are the only aggrieved right-holders under social contract theory⁶⁶. Foreign intervention violates the right of the citizens because it accelerates artificially their aversion to the regime.

But leaving aside such extreme implications of the right to participate, it is important to register an epochal shifting in international law to the protection of the people's sovereignty from the sovereign's sovereignty.

Another problem is the difficulty of verification of the compliance of a state with this right. Who can then define free and fair the elections (if free and fair is still a sustainable criterion for the elections)? As we will see, an election is not a simple event taking place in one given day. It is a very complex process made of electoral campaign, access to media, freedom of circulation and speech, freedom of assembly, and many other logistic events. Is it really possible to evaluate such a complex situation? Where it is possible to set the border between policy and procedures? Can we expect to use the same criteria evaluating an election in Africa, in Europe and in Latin America? We will try to draft some answers in the final part of this thesis.

2.3 Is there a human right to democracy?

Increasingly, governments recognize that their legitimacy depends on meeting a normative expectation of the community of states, namely that the ruling party had been chosen through an electoral process whose result represents the popular will. Or, to put it in another way, that those who seek the validation of their empowerment patently govern with the consent of the governed. Democracy, thus, is on the way to become a global entitlement, one that increasingly will be promoted and protected by collective international processes⁶⁷.

In the last decades, mainly thanks to the human rights system, we have witnessed a slow, but dra-

65 Reisman, W. Michael. 1990. p. 869

66 Fox, Gregory H. 1992. p. 551.

67 Franck, Thomas M. 1992.

matic, change not only in the international law, but in the expectations and the behaviour as well, of the main international players. The result is now that the legitimacy of each government is more and more measured by the international rules and processes defined in the UN tools, and in the human right system. Concerning, then, the participation rights and the legitimization of the power by the popular will, this trend of the last decades raises the further question if there is or not an emerging right to democracy, and if the process described in the tools we are analysing is or not democracy.

Following some scholars⁶⁸, it seems possible to find in the UN Charter all the essential characteristics of a democracy, the western, liberal, democracy. It is true, however, that the very word *democracy* never occurs in UDHR, and only once we have the adjective *democratic*. It happens in the art. 29: the adjective is referred to *society* in a context where some limitations are posed to the full enjoyment of the rights and freedoms of the individuals. We have a similar situation in the ICCPR: *democracy* never occurs, whilst we have three times *democratic society*.

However, as we will see better analysing the UN official documents, there is an ongoing shifting from the idea of popular participation toward an idea of democracy more and more similar to the liberal democracy.

Therefore the question now is, if between the lines of art. 21 of UDHR and 25 of ICCPR it is possible to see a right to democracy, or not. My opinion is that such a right does not exist if by *democracy* we intend the western liberal model; and this is the predictable answer, if we wish that this part of the human rights body (participatory rights) not to be seen as kind of western political and cultural colonisation. In spite of the fact that the language of these articles strongly suggest a western democratic model, however we can interpret the right to participate as not completely overlapping with such idea of liberal democracy, so to leave the possibility to adjust the participation idea to a variety of cultural and political environments. We have already seen in the previous paragraphs the difficulties linked to a too easy universalisation of the idea of democracy. Now, leaving aside all the philosophical issues, I'll follow here the arguments of Henry Steiner arguing that a full fledged democracy is encouraged as a programmatic ideal but not required by human right conventions.⁶⁹

Steiner analyses art. 21 of UDHR and 25 of ICCPR and singles out two different clauses contained in the articles. The first one concerns a wide and not better defined right to *take part* in the government of the country; the other one, the *election* clause, describes quite in detail the minimal charac-

68 "Sebbene il termine «democrazia» non compaia nel testo della Carta istitutiva, suoi elementi essenziali affiorano in tutto il documento, a cominciare dal Preambolo dove si legge: «We the People of the United Nations» (corsivo aggiunto), ci impegniamo non solo a eliminare il «flagello della guerra» ma anche a promuovere valori e pratiche di tipo decisamente democratico (o forse sarebbe meglio dire liberale) quali i «diritti umani fondamentali», «la dignità e il valore della persona umana», «gli uguali diritti degli uomini e delle donne e delle nazioni piccole e grandi», «migliori standard di vita» e la «tolleranza». Foradori, Paolo. 2007. p. 90

69 Steiner, Henry J. 1988. p. 100

ters the elections must have in order to be a believable expression of the popular will. Now the issue is to assess if only with democratic regimes the two clauses are respected or not.

Political participation can be interpreted as an instrumental or an inherent good. To interpret it as an instrumental good signifies to understand it as a means for the individual, be it a single person or an organised groups of interest, to influence, to have a voice or to exert a kind of control over the political life. In this vision, elections are the highest way to manifest such control and influence: the elections give the voters the possibility to show their judgement about the governmental policies and to control the political activity manifesting approval or disapproval. In this frame a little minority of the population is engaged in further activities aimed to let the elections to take place. So they organise campaign activities, or act as active members of political parties. In this interpretation the political power strongly remains in the hands of small elites who really determine the policies. The other citizens maintain only the right to evaluate such policies, and not the possibility to contribute to the draft of them. So, at the end of the day, the citizens have a limited control through which, anyway, they are able to draw some boundaries to the power in charge. Such indirect participation to political life is enough to achieve that part of the liberal theory aimed to protect citizens against any abusive state action.

But political participation can be an instrumental and an inherent good at the same time. In this second case the elections, and the political activities related to them, are useful, but insufficient, tools to reach a full involvement of the citizen in the political life. Reducing the popular participation to the simple electoral exercise denies any kind of benefit which could come from a more active involvement in the political life. The theorists of a direct or strong way to participate to the democratic life recognise the impossibility of an extensive participation in the central government of modern states, and even if there are some institutes of direct democracy, as referenda or the use of specific mandates, the overall situations does not change. So, they advocate some decentralized models which could encourage and ease some kind of participation at the local level. This local participation can concern local political decisions, representation in local political boards, public meetings and discussions or any other participatory approach to the political sphere; and it can concern active participation in the formulation of policies of non-governmental institutions. Such a vision becomes a challenge to a traditional distinction between private and public life; and the political participation becomes a sort of way of life where the public and the domestic sphere of the individual fade into one another. Such growing involvement of citizens in the public life should imply a personal self-realisation due to the growing control of the individual on a wider range of public issues which otherwise would be out of their control. The inherent good of this kind of participation

is, then, the self realisation of the individual inside a social structure and a political frame.

Now both articles, 21 of UDHR and 25 of ICCPR, are very undetermined in describing this *take part clause*, so that each State can draw the political space and the political boundaries of the participation in a peculiar way. The State's decisions have important consequences on the quality of the participation, and it is often here one of the elements distinguishing liberal democracies from non democratic regimes. The way the participation structures are designed matters, and an effective and non formal enjoyment of the participation right is heavily influenced by the political structure.

The same articles, however, are very detailed concerning the *election clause*: they say that the elections must be free and fair, held by secret ballot and on a periodical basis.

We can try to find the reason of such difference in a classical distinction made among the human rights, namely the distinction between the rights which can be realised simply with the State restraining itself from unlawful behaviours and condemning it (for example restraining from torture and sanctioning every act of torture); and the programmatic ones, i.e. the human rights whose realisation is an ongoing process never able to get a fully accomplishment, but evolving in the time. So in liberal democracies the duty of a government is to prepare the field where the citizens can play their political action, and to provide equal protection for all political activities. This duty can be seen as the minimum requirement in order the *take part clause* to be satisfied. After that, it is up to the citizens to decide the level, if any, of their political involvement. The right to vote, on the other side, demands a different involvement of the government. For this to be realised it is not sufficient to level the field for the players, but it is necessary that positive actions are taken. And the positive actions are the ones aimed to ensure the minimum requirement drafted in the international tools: to be genuine, periodic, by universal and equal suffrage, and to be held by secret ballot.

What seems clear from this short analysis is that neither the *election clause* nor the *take part clause* imply a right to a democratic government. Even if the *election clause* lists some minimal requirement for the election to be considered free and fair, both the clauses express some really undetermined elements which can be interpreted in dramatically different ways in the various regions of the world. All political regimes, regardless if they are or not democratic, can have some kind of political participation and even some kind of controlled elections which at least from the procedural point of view respect the words of the UDHR and ICCPR.

But from another hand in the last years, after the end of the cold war, the idea of a right to democracy has become accepted and more and more we can talk about an emerging international law supporting such claim⁷⁰. In the UN system an Electoral Assistance Division has been created and

70 Fox, Gregory H. 2007.

promotion of democracy has become a relevant part of UN activity, in particular in post-conflict countries, and one of the main requirements of some regional organisations, mainly European and American, to be accepted as a member. On top of that such international organisations are engaged in a wide range of activities aimed to promote democracy. In its 1997 Universal Declaration on Democracy, the Inter-Parliamentary Union describes democracy as a basic right of citizenship.

Such activities support the idea of an emergent norm of democratic governance. There are however a couple of constraint to this idea. Basically, as a matter of fact, there is no widely accepted definition of what democracy is. None of the previous way to understand democracy has had enough consensus to become an accepted standard for all the cultural and political traditions. We could have a procedural definition of it, mainly based on art. 25 of ICCPR, following which democracy is mainly based on free and fair elections and on participation. Taking aside the fact that participation, as we have already seen, has a lot of different ways to be implemented, this procedural vision of democracy focuses only on the way a government is chosen and does not take care of the way it rules and if, for example, a government respects or not all the other human rights.

On the other hand we can have a substantive idea of democracy exemplified by the resolution 1999/57⁷¹:

the rights of democratic governance include, inter alia, the following:

- (a) The rights to freedom of opinion and expression, of thought, conscience and religion, and of peaceful association and assembly;
- (b) The right to freedom to seek, receive and impart information and ideas through any media;
- (c) The rule of law, including legal protection of citizens' rights, interests and personal security, and fairness in the administration of justice and independence of the judiciary;
- (d) The right of universal and equal suffrage, as well as free voting procedures and periodic and free elections;
- (e) The right of political participation, including equal opportunity for all citizens to become candidates;
- (f) Transparent and accountable government institutions;
- (g) The right of citizens to choose their governmental system through constitutional or other democratic means;
- (h) The right to equal access to public service in one's own country;

As it can be easily seen, in this substantial definition there is much more than the simple procedures. The kernel of the matter is the issue concerning the way an elected government exercises its own power. Here we have a lot of additional requirements, including protection of minorities, freedom of speech and social rights. Therefore the democracy so understood looks more and more like

71 UN Commission on Human Rights, Promotion of the right to democracy., 27 April 1999, E/CN.4/RES/1999/57.

*an aggregation of human rights protections that focus on politics*⁷².

So, I think it is possible to agree with the thesis exposed by Steiner⁷³ when he says that the right to participation is much more similar to economic and social rights than to civil and political ones. The first group of rights cannot be fully operational following the ratification of a nation. They are programmatic, and a party to the covenant has to take steps aimed to achieve the full realisation of the rights in the list, and the same rights are subject to an ongoing elaboration and definition over the time. So, even if the right to participate falls within the civil and political rights, it can be better understood as sharing the programmatic character of many economic and social rights. In particular this holds true for the *take part clause*. For this clause it is very difficult, if not impossible, to set a common standard or some widely agreed way of realising the duties it imposes. As societies change, and as time and place change, at the same pace changes the content of this rights and it has to be reformulated.

So, getting back to the question raised in this paragraph: is there a human right to democracy? We can close by quoting Marks:

there is no international legal basis for a right to democratic governance, but states are obliged to move 'towards democracy', in the sense that regressive measures can and should be sanctioned and positive steps must be taken to put in place and consolidate democratic institutions. From this perspective, democratization as a process is legally required, even if democratic governance as a state of affairs is not.⁷⁴

2.4 The right of self determination

The right of participation is a part of a wider democratic entitlement encompassing the self-determination right and the freedom of expression too. Therefore it is no possible to talk about right to participate and right to democracy without spending a few words at least on the right of self-determination. Treating the freedom of expression would lead us too far from the main aim of this thesis. It is, however, clear that in the very complex political process finalised to free and fair elections, namely to the most evident element of the political participation, freedom of expression plays a paramount role. No believable election can take place where there is no equal access to media, where the media are not free, and where citizens and political players are not allowed to freely express their own opinions.

The right of self-determination has a even closer connection to the right to participate, and therefore, even if this is not the place for a deep analysis of it, a little bit longer analysis of it is required.

72 Fox, Gregory H. 2007. p. 7

73 Steiner, Henry J. 1988. p. 129 and followings.

74 Marks, Susan. 2011. p.512.

This link is so close, that the General Comment to the art. 25 of ICCPR underlines that connection at the very beginning in its art. 2:

The rights under article 25 are related to, but distinct from, the right of peoples to self-determination. By virtue of the rights covered by article 1, peoples have the right to freely determine their political status and to enjoy the right to choose the form of their constitution or government. Article 25 deals with the right of individuals to participate in those processes which constitute the conduct of public affairs. Those rights, as individual rights, can give rise to claims under the first Optional Protocol.

So the two rights are interlinked: if the ICCPR opens establishing the right of the peoples to self-determine (*All peoples have the right of self-determination*), the art. 25 translates this collective right in the individual right to participate to such process. How some scholars recognise⁷⁵, the self-determination right is the essential foundation for other human rights, given that an authentic realisation of the individual rights is possible only after the self determination right is realised. I do not completely agree with this interpretation. The interconnection among the human rights is now widely admitted, so that the effort to set anyone of them as more important than another -or foundational to the others-can only be the result of an ideological approach. So, in the art. 2 of the GC, we have a sort of bottom up approach, where the right of the peoples can be seen as the sum of the rights of the single citizens to determine themselves.

The root of the 20th century notion of self determination are mainly in the Marxist doctrine and the interpretation Lenin gave of it⁷⁶. The right of the nations to self determination was the centre of the Lenin's approach to international policy in the immediate post-1917 period⁷⁷. This socialist root had, of course, influence on the international politics of USSR which, in the period after the second world war, submitted to the Fifteenth Session of the UN General Assembly the draft of the historic Resolution 1514 (XV) of 14 December 1960, the *Declaration on the granting of independence to colonial countries and peoples*. This historic resolution noted the connection between the right of peoples to self-determination and individual freedoms.⁷⁸ It raised a whole wave of reactions and protests, but, none the less, was adopted. The right of self-determination of peoples is now a funda-

⁷⁵ See Bowring, Bill. 2008. p. 33. He refers to Kristesky quoted by Grushkin.

⁷⁶ "We demand freedom of self-determination, i.e., independence, i.e., freedom of secession for the oppressed nations, not because we have dreamt of splitting up the country economically, or of the ideal of small states, but, on the contrary, because we want large states and the closer unity and even fusion of nations, only on a truly democratic, truly internationalist basis, which is inconceivable without the freedom to secede. Just as Marx, in 1869, demanded the separation of Ireland, not for a split between Ireland and Britain, but for a subsequent free union between them, not so as to secure "justice for Ireland", but in the interests of the revolutionary struggle of the British proletariat, we in the same way consider the refusal of Russian socialists to demand freedom of self-determination for nations, in the sense we have indicated above, to be a direct betrayal of democracy, internationalism and socialism." Lenin: The Revolutionary Proletariat and the Right of Nations to Self-Determination, <http://www.marxists.org/archive/lenin/works/1915/oct/16.htm>

⁷⁷ Bowring, Bill. 2008. p. 9 and followings.

⁷⁸ Conscious of the need for the creation of conditions of stability and well-being and peaceful and friendly relations based on respect for the principles of equal rights and self-determination of all peoples, and of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

mental principle in international law, and it is embodied in a number of relevant international treaties. In the Charter of United Nations it is mentioned in the articles 1 and 55⁷⁹, and in the ICCPR and in the International Covenant on Economic, Social and Cultural Rights is expressed in their common art. 1, establishing that all peoples have the right of self-determination, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development. It has also been recognized in other international and regional human rights instruments such as Part VII of the Helsinki Final Act 1975, art. 20 of the African Charter of Human and Peoples' Rights, art. 2 and 5 of the Declaration on the Granting of Independence to Colonial Territories and Peoples.

So, as a matter of fact, this right has been given a very important place in some of the major international tools placed, as it is, in the opening article. As a part of the democratic entitlement, self-determination is an essential condition for the effective guarantee of individual human rights:

The right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. It is for that reason that States set forth the right of self-determination in a provision of positive law in both Covenants and placed this provision as article 1 apart from and before all of the other rights in the two Covenants.⁸⁰

This comment is interesting because it seem to explain the role of the self-determination right in a quasi Marxist way namely, as we have seen a few lines ago, setting it as the basis for the other human rights. More in general, we seem to assist here to a sort of equalisation between self-determination and democracy, which it is not weird if we consider that in both cases we are faced with different expressions of the same concept: the realisation of the will of the people. Thus, the importance of self-determination, as the importance of the democracy, lies in the fact that only in a framework where a democratic institutions are up and running we can have the highest possibilities the human rights be respected. And this is, then, the reason why, through an ideological operation, the self-determination can be considered the basis of the other human rights⁸¹. At the domestic level, thus, self-determination is the best guarantee of the respect of individual rights. On the international sphere such respect becomes a necessary prerequisite in order the friendly relations among nations have better chances to fully develop. So this right is something that is due by the governments both to their people and to all the other members of the international community.⁸²

79 Even if not mentioned by name, the self-determination right is stated in art. 73 and 76 of the UN Charter as well, where the issue of the non self-governing territories and of the international trusteeship system is treated. In the art. 73 the term used is "self government" and in art. 76 the same term is coupled with "independence".

80 Human Rights Committee, General Comment 12, Article 1

81 I say *ideological* meaning that it has been chose a particular, political, point of view to look at the human rights. Choosing a different point of view could bring us to different conclusions.

82 Franck, Thomas M. 1992. p. 54.

The right of self-determination is not unproblematic, and one of the main reasons is that whilst we have a definition of a collective right, we don't have a definition of the collectivity holding the right, in this case *the people*. There is a definition of people, as a right bearer, prepared by the UNESCO Group of Experts on the Rights of Peoples, and even if there is a quite wide consent on it, however, it still represents a compromise between a lot of proposed others, and it is less a binding definition universally accepted than a working tool for UNESCO⁸³.

Self-determination can be considered the historic root from which the democratic entitlement grew, and the oldest aspect of this entitlement.⁸⁴ It is a collective right which can be seen as the affirmation of a people against any kind of external oppression, and it postulates the right of the peoples to determine their own common political, cultural and economic destinies. This determination has to be expressed through democratic processes, because there is no viable way of representing the common will of a collective entity without the participation of the single members of it. In this point it can be easily spotted the closeness of the relationship between self-determination and participation: we recur to the idea of participation to explain the self-determination and vice versa. So the democratic entitlement lies into the core of the self-determination right, which is the basis for participation.

Roughly speaking, in the last century we can identify at least a couple of main waves of entitlement to self-determination. One took place after the end of the first world war, when the Versailles Peace Conference redrew the internal European borders, following the fall of the Austro-Hungarian empire and the redefinition of the German borders. The principle of self-determination was applied only for the territories of the defeated nations, whilst for the rest of Europe it was applied only in Ireland.

The other wave took place a few years later, after the end of the second world war and after the creation of the United Nations. During this second period the principle of self-determination became a much more dynamic concept in the international relations, mainly aimed to the secession of colonies from the empires owning them, but taking care not to question the territorial integrity of the

83 a. "A group of individual human beings who enjoy some or all the following common features: (i) a common historical tradition, (ii) racial or ethnic identity; (iii) cultural homogeneity; (iv) linguistic unity; (v) religious or ideological affinity; (vi) territorial connection; (vii) common economic life.

b. The group must be of a certain number who need not be large (e.g., the people of micro states) but must be more than mere association of individuals within a state.

c. The group as a whole must have the will to be identified as a people or the consciousness of being a people - allowing that groups or some members of such groups, though sharing the foregoing characteristics, may not have the will or consciousness.

d. Possibly the group must have institutions or other means of expressing its common characteristics and will for identity."

United Nations Economic and Social Council, International Meeting of Experts on Further Study of the Concept of the Rights of Peoples: Final Report and Recommendations, 1990 paragraph 22

84 Franck, Thomas M. 1992.

colonies themselves. If the remarkable process of decolonisation took place, in most cases, without recourse to war or revolution it can be considered a political success of the community of states which dared to give the legitimacy and primacy to the right of self-determination. Such a right was not only recognised as a tool for obtaining decolonisation, but it became a fundamental right recognised by the UN Chart as a building brick for *friendly relations among the nations*.⁸⁵ In this way the right became internationally recognised and the denial of the self-determination was not any more a matter of domestic concern only. But in this international process very often the rights of minorities inside the colonies have been completely neglected. The same General Assembly, as we will see in a few lines, explicitly stated the paramount importance of the principle of the territorial integrity in front to any secessionist will. So the interests of the states, as they have been shaped by the colonial empires, won over the legitimate interests of the peoples to create new political entities.

The principle of self-determination has two different aspects: a political one and an economic one. The economic one seems to be defined in the second paragraph of ICCPR art. 1 where the self-determination is extended to the right of the peoples to dispose of their natural resources and natural wealth.⁸⁶ We don't go further in deep of this aspect which is less relevant for the theme at stake here. It is only worthwhile to notice that this right of economic self-determination is better recognised and accepted through the wider right of self development.

The political aspect has, as well, two sides⁸⁷. One is external, which means it has to do with the international scene; with the way the peoples affirm their own identity; and with the way they try it to be recognised in front to all the other states. So this external self-determination implies that each people (whatever this term means) has the right to freely determine their political status, and to an international respect based on the principle of the absolute equality of rights among all the peoples. The major example of this right is the liberation of peoples from any form of colonialism and the prohibition to submit them to any kind of foreign or alien domination.

The other aspect, *internal*, is the right of the peoples to freely pursue their economic, social and cultural development without any external interference. It is this second aspect which is strictly intertwined with the right of participation. The domestic aspect of the self-determination can be managed only if it is a democratic and participatory approach is implemented, because this is the only viable way allowing a full expression of the community which recognises itself as a people.

⁸⁵ UN Chart art. 1 paragraph 2.

⁸⁶ “ All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.” ICCPR art. 1 paragraph 2.

⁸⁷ See also Foradori, Paolo. 2007. p. 90 note 10: “Secondo una certa interpretazione, il principio di autodeterminazione ha non solo una dimensione «esterna», che rivendica il diritto di tutti i popoli a non essere sotto-posti ad un governo straniero, ma anche una dimensione prettamente «interna», per cui i governi di tutti gli stati dovrebbero caratterizzarsi per una propria legittimità democratica”

What is interesting in such way to make self-determination one of the building block of democratic entitlement is that the very controversial idea of self-determination as right to secede, can be transformed in the right to participate. Therefore self-determination in a democratic environment does not entail any more the right to dismember a national territorial integrity and unity, but rather the right for the minorities and the communities living inside a state to be represented and to have a voice just through participation.

This interpretation goes in the same direction of the Declaration 1514 on the Granting of Independence to colonial Countries and People, where is clearly stated that

Any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a country is incompatible with the purpose and the principles of the Charter of the United Nations⁸⁸

On top of that, the fact that the democratic entitlement is now a right internationally recognised and protected implies that the elections, as a paramount manifestation of the right to participate (individual right), and as a major mean for the peoples to get their self-determination (collective right), are monitored by international observers. So, the idea of self-determination slowly evolved in a general notion of internationally validated political consultation, which was at the beginning applying to the colonies and post-colonial states, and now it is more and more applied to sovereign States as well.⁸⁹

88 UN General Assembly, Declaration on the Granting of Independence to Colonial Countries and Peoples, 14 December 1960, A/RES/1514(XV) paragraph 4. More recently see the Resolution 35/118: *Plan of Action for the Full Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*.

89 Franck, Thomas M. 1992.

3 The United Nations, elections and democracy. Main UN sources

As it is now widely admitted.⁹⁰, there is an undeniable link between the respect of human rights and a sustainable economic and social development. So, the democratic institutions which are the more reliable to guarantee the human rights, are a source of human security, human development and economic prosperity⁹¹; on the other hand the political oppression is one of the deepest causes of conflict⁹², and a destabilizing factor. Thus, in the processes of (post- conflict) peace-building, election monitoring, strengthening institutions and promoting political participation, as well as democracy within nations, are key factors for ensuring the respect for the human rights and fundamental freedoms. The argument in favor of a democratic form of government as a requirement of international law began to get moment during the early 1990s. In this period

on the one hand the notion of democracy as ‘individual human right’ has remained largely rhetorical, while on the other, democracy’s standing as a ‘relevant criterion’ of entitlement has indeed strengthened across a broader field of political relation.”⁹³

So, the involvement of the UN in the democracy promotion activities and

in electoral activities is rooted in the Organization’s responsibility to cooperate with Member States to promote the basic rights enumerated in the Charter of the United Nations and in the Universal Declaration of Human Rights. Article 21 of the Declaration states that Everyone has the right to take part in the government of his country, directly or through freely chosen representatives”, and that “The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”⁹⁴.

In one of his contributions, Fox divided the UN democracy promotion activity into four categories.

90 See, for instance, Boutros-Ghali, Boutros. 1996. paragraph 21: “There is, however, ample evidence suggesting that, over the long term, democracy is an ingredient for both sustainable development and lasting peace.”; or paragraph 25; “The reality is that no State can long remain just or free, and thus also have the potential to pursue a successful and sustainable development strategy, if its citizens are prohibited from participating actively and substantially in its political processes and economic, social and cultural development.”

91 See Report of the Secretary-General on the work of the Organization, GAOR, 52nd Sess., Supp. No. 1 (A/52/1), 1997, p. 5, paragraph 22.: “It is increasingly recognized that good governance is an essential building block for meeting the objectives of sustainable development, prosperity and peace . . . [G]ood governance comprises the rule of law, effective state institutions, transparency and accountability in the management of public affairs, respect for human rights, and the meaningful participation of all citizens in the political process of their countries and in decisions affecting their lives.”. See also: Boutros-Ghali, Boutros. 1996. paragraph 121: “However, there is little to suggest that development requires an authoritarian regime and much to suggest that, over the long term, democracy is an essential ingredient for sustainable development. At the same time, development is an essential ingredient for true democracy so that, beyond formal equality, all members of society are empowered to participate in their own political system.

92 “And in the largest sense, to address the deepest causes of conflict: economic despair, social injustice and political oppression.” Boutros-Ghali, Boutros. 1995. (1) paragraph 15.

93 Goodwin-Gill 2006, p. 71.

94 U.N. doc A/58/212 paragraph 2.

First, the UN provides electoral assistance to many states through the Electoral Assistance Division of the Department of Political Affairs. The UN received 363 requests for electoral assistance between 1989 and 2005 and provided assistance in 96 countries. Second, as part of its reconstruction activities in post-conflict states, the UN regularly helps strengthen and create democratic institutions and organize and monitor elections. In three cases – Kosovo, East Timor and Eastern Slavonia – the UN administered the territories directly. In each case democratization was a central goal of the international authority. Third, the UN is engaged in rule of law initiatives in post-conflict states and elsewhere. The substantive conception of democracy would view these efforts as central to democratic consolidation. Fourth, in two cases – Haiti in 1994 and Sierra Leone in 1998 – the Security Council approved the use of force to return elected leaders to power after they had been forcibly removed from office.⁹⁵

Let see, then, how UN position on these issues has evolved since the end of the 80s.

3.1 The resolutions

If we want to understand how UN manages the issues concerning the right to participate, democracy and elections, one of the best way is probably to have a look to the official documents, General Assembly resolutions in particular, where the lines to be followed in the UN actions are drafted. Starting from 1988 there is a number of UN General Assembly Resolutions concerning the electoral assistance⁹⁶ offering us the opportunity to sketch the trends over the last 26 years. As a matter of fact we should talk not about 30 or more resolutions, but three series collecting them, each of which identified by a same title. So we have: *Enhancing the effectiveness of the principle of periodic and genuine elections* which starting from 1995 changes its title in *Strengthening the role of the United Nations in enhancing the effectiveness of the principle of periodic and genuine elections and the promotion of democratization*; then we have *Respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes* (from 1991 to 2006), and *Support by the United Nations system of the efforts of Governments to promote and consolidate new or restored democracies*.

Before analysing the resolutions, a quick remark concerning their structure: it tends to be modular, meaning that the resolutions are mostly built with the same bricks, i.e. with some paragraphs repeating, from one resolution to another, the same sentence. This structure at a first glance could give the feeling to be reading roughly the same document, which does not help to grasp the evolution of UN position. But this repetition does not entail that the resolutions merely re-state the same messages over and over. It is true that some principles are present in all the resolutions; but it is true as well that the resolutions, and the action of United Nations, are built on a few firm principles, in particular

⁹⁵ See Fox, Gregory, H. 2007. p. 8 (paragraph 14).

⁹⁶ <http://www.un.org/wcm/content/site/undpa/main/issues/elections/resolutions> (last browsed on May 15th 2015). The list in the website is not complete: there are missing the resolutions of late '80s.

UDHR and the Covenants, and that it is worthy, anyway, to re-state them as long as most of them are widely neglected in some areas of the world. So, the attention won't be particularly set on the recurring paragraphs, but on the differences and of new elements we can find from one resolution to the other ones. Some times those new elements are connected to the historical situation, as is the case of the condemnation of apartheid, some others are completely new aspects or improvement in the understanding of the doctrine.

3.2 UN resolutions “Enhancing effectiveness of the principle of Periodic and Genuine elections”

Enhancing effectiveness of the principle of Periodic and Genuine elections is the title of a series of resolutions the General Assembly voted starting from 1988. The resolutions have been voted each year till 1998, and every second year from then on. The last voted resolution with this title has been approved in 2012; starting from 1995 the title of resolutions changed in *Strengthening the role of the United Nations in enhancing the effectiveness of the principle of periodic and genuine elections and the promotion of democratization*.

The first *Enhancing* resolution is the A/RES/43/157 dating back to 1988. The late 1980s is a period where a wave of democratisation processes took place and where, therefore, it started being easier and easier to have a majority in the General Assembly in support for such processes. Even if the historical situation was much more favourable to democracy in comparison to the cold war period, however the fear of interference in the internal State's affairs was still very present and influencing the behaviour of the states.⁹⁷ In this first resolution the focus seems to be mainly on the South-Africa apartheid situation, which is mentioned in the fourth preambular paragraph. UN General Assembly condemned apartheid since 1946 with several resolutions, but it is only with this resolution that apartheid is condemned because it does not respect the necessary freedom to vote. Following this main direction, the resolution emphasizes the importance of participation of all citizens, and

Reaffirms that apartheid should be abolished, that the systematic denial or abridgement of the right to vote on the grounds of race or colour is a gross violation of human rights and an affront to the conscience and dignity of mankind, and that the right to participate in a political system based on common and equal citizenship and universal franchise is essential for the exercise of the principle of periodic and genuine elections.⁹⁸

The language, the style and the general atmosphere of this paragraph recall the ways of UDHR: they are quite declaratory, and insist on general principles such as dignity, equality, universal fran-

97 Beigbeder, Yves. 1994. p. 100.

98 UNGA Resolution A/RES/43/157 paragraph 4.

chise. And not only this paragraph, but the whole resolution keeps the same general structure emphasising the universal principles and the establishment of the principles. Generally speaking it could be said that all the first resolutions share this same peculiarity.

However it is interesting the fact that article 21 of UDHR and 25 of ICCPR are used as tools to condemn apartheid. The apartheid is a major violation of one of the more basic and fundamental value of the human society, the equality of all human being between themselves. Therefore whenever there is an attack to the pillar of a building, the entire building is put in danger, and negative consequences can be found in every corner of it. So it is clear that the apartheid, violating the basic principles of the human rights system, cannot be compliant with any of the other human rights. Therefore whenever the restrictions, or the denial of a rights lies outside the reasonableness as it happens for the apartheid, namely when the restrictions to the freedom of vote and to the right to participate take place for racial reasons, we have a new additional motive to blame the apartheid as opposite not to one or two specific rights, but to all of them⁹⁹. And it is new and interesting to use another tool to condemn apartheid from a different perspective to make better understand how hideous it is.

The *Enhancing* resolution of the following year, A/RES/44/146, is still aimed to condemn the apartheid system, using similar but more detailed words in the fourth preambular¹⁰⁰; and it goes further in the details condemning as well, as a gross violation of the principle of universal and equal suffrage, the tricameral parliament established under the apartheid regime. In this Resolution a couple of points deserves a closer attention.

The first one is the sentence affirming that *there is no single political system or electoral method that is equally suited to all nations and their people*. This sentence seems to introduce a limitation to the universal validity of the value of democratic system, opening the possibility that political systems be subject to other factors (historical, political, religious, geographical). Following Beigbeder, behind this sentence lays China, whose political aim, at that time, was to allow every state to choose its own electoral system; and to prevent undue interferences in the internal choices on electoral matters.¹⁰¹ This position finds a further echo in the fourth paragraph, where it is said that the effort of the international community to enhance the effectiveness of the principle of periodic and genuine elections

99 Beigbeder, Yves. 1994. p.101.

100 "Condemning the system of apartheid and any other denial or abridgement of the right to vote on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" A/RES/44/146. It is worthy to note that this resolution "was adopted in the Third Committee only after its sponsor (most Western countries) had to accept the omission of "alternative" or "distinct alternatives", in other words, the elimination of pluralism from the electoral process and its outcome" Beigbeder, Yves. 1994. p.101.

101 Beigbeder, Yves. 1994. p.102.

should not call in question each State's sovereign right freely to choose and develop its political, social, economic and cultural systems;

and in the fifth paragraph where the principle of non interference in the internal affairs of a State is reaffirmed in connection with the choice of the electoral system¹⁰². It is difficult not to think, here, to the mentioned dichotomy between the old vision of the State as the main player on the international stage and the new role of the individual¹⁰³, and the contradiction stemming from it.

If this point is important for its practical and political effects, the other interesting element of this resolution is instead something more related to a theoretical aspect because it concerns the right to participate. This right is a pivotal element allowing a wide range of others fundamental rights to be fully enjoyed. The right to participate is qualified as a *crucial factor in the effective enjoyment by all of a wide range of other human rights and fundamental freedoms*¹⁰⁴, which explains all the efforts the United Nations put in place to take care of this right. The right to participate not only is a right affecting the right bearers individually taken; but it is a right whose effects have an impact on the other rights as well, so that it creates a better environment for the individuals to live in.

The resolution *Enhancing* A/45/150 of course builds on the previous two, and some of the conclusions of the two previous resolutions become here preambular paragraphs: in particular the possibility for a State to freely choose political, social, cultural and economic systems; and the fact that there is no single political system or electoral method that is equally suited to all nations and their people. On the other hand it doesn't shift in the preambular section the conclusion that the right to participate is the crucial factor for the enjoyment of a wide range of others human rights.

There are two interesting new elements of this resolution compared to the previous ones: the paragraph 8 where is affirmed the value of the electoral assistance that UN has provided at the request of Member States; and paragraph 9, where the international community is called to keep on considering how the UN can respond to the member states asking for a support in promoting electoral institutions and procedures. The document ends with the request for the Secretary General to redact a report of UN experience on elections monitoring. So from 1991 on, periodical reports of the SG will be redacted in order to assess how the *Enhancing* resolutions are really implemented by the UN. Therefore it could be interesting to cross reference resolutions and reports in order to find the evolutionary path followed by UN in the field of electoral matters.

The resolution *Enhancing* A/46/137 comes after the first Secretary General report (A/46/609) re-

102 “*Underscores* the duty of each member of the international community to respect the decisions taken by other States in freely choosing and developing their electoral institutions” UNGA Resolution A/RES/44/146 paragraph 5.

103 See back paragraph 2.2 : The right to political participation (p. 38 and followings).

104 UNGA Resolution A/RES/44/146 paragraph 2.

quested in the resolution A/45/150, and therefore it refers to the conclusion of this document in a couple of paragraphs. In particular in the preambular section takes note of the criteria UN has to consider, following the SG, before agreeing to the requests for electoral verification. Here is the paragraph where the criteria are listed:

[....] requests should pertain primarily to situations with a clear international dimension; the monitoring of an election or referendum should cover the entire electoral process in order to secure conditions of fairness and impartiality; where the induction of a United Nations presence in the electoral process of a State at a critical point in its political life is sought by the Government concerned, there must be broad public support in the State for the United Nations assuming such a role; and, finally, there should be approval by the competent organ of the United Nations.

All of them seem to be aimed to assess, before any external intervention, the existence of a broad popular and political consent inside the State, and a political consent inside the UN. The frame is therefore a situation where the UN support to the States requiring assistance in organising the elections is already established. We were in 1991, and United Nations were establishing the UNTAC mission in Cambodia. At that time UN had already supervised and administered the first elections in Namibia in 1989 as a part of a bigger peacekeeping operation, and monitored elections in Nicaragua in 1990. Thence the necessity to start drafting some shared guidelines for the future.

The resolution endorses as well the request, made by the SG, to create a focal point for electoral matters within the Secretariat.¹⁰⁵ The tasks of this focal point are detailed in the same paragraph 9: she or he has to assist the SG,

to channel the requests for electoral assistance to the appropriate office or programme, to ensure careful consideration on requests for electoral verification, to build on experience gained to develop an institutional memory, to develop and maintain a roster of international experts who could provide technical assistance as well as assist in the verification of the electoral processes and to maintain contact with regional and other intergovernmental organizations to ensure appropriate working arrangements with them and the avoidance of duplication of efforts, and requests the Secretary General to designate such an official to take on these tasks¹⁰⁶.

This resolution can be seen as a concrete step toward the endorsement of a UN growing role in the electoral field, even if, as noticed by Beigbeder, the establishment of permanent machinery to provide electoral assistance would undoubtedly exceed the Organization's mandate under the Charter¹⁰⁷.

There are a couple of important issues emerging from the Resolutions approved in the following two years. Here is the paragraph 2 from Resolution A/48/131:

105 See SG Report A/46/609 paragraph 81 and UNGA Resolution A/46/137 paragraph 9.

106 See UNGA Resolution A/46/137 paragraph 9.

107 See Beigbeder, Yves. 1994. p. 103.

[The General Assembly] commends the electoral assistance provided to Member States at their request by the United Nations, requests that such assistance continue on a case-by-case basis in accordance with the proposed guidelines on electoral assistance, recognizing that the fundamental responsibility for ensuring free and fair elections lies with Governments, and also requests the Electoral Assistance Unit of the Secretariat to inform Member States on a regular basis about the requests received, the responses given to those requests and the nature of the assistance provided;

In this sentence some points are clearly stated. The first one is that the electoral assistance is provided to the States upon request and on a case-by-case basis. The implications of this choice are quite easy to understand: the UN support cannot be imposed upon a State which, anyway, maintains its own sovereignty. The role of UN is a subsidiary one, and UN intervenes only if requested. We are in a framework which is not political but logistic; which means that the UN intervention has to be targeted to help a requiring State to set up and fine tune the electoral machinery. The problems which could arise in case the right to the elections is not respected are not mentioned at all. The political question of the respect of the rights or of their enforcement seems to be beyond the horizon of the Resolutions. We can find roughly the same requirements in a further point, where it is said that the assistance is provided in accordance with the guidelines set in Annex III of the General Assembly Resolution A/49/675. Following these guidelines, the first condition is a formal, written request for electoral assistance from the Government; and the second one is the conduct of a needs assessment mission to the country. So, it is now better established that the request has to be submitted in a written and formal form, and that anyway the UN needs to assess the situation before any decision if to accept or not the request. Finally it can be noticed that some emphasis is put on the fact that the fundamental responsibility of free and fair elections lies with the Governments, which is a way to re-state the subsidiary role UN maintains, and at the same time to stress the duty of each State to comply with the international laws. However no hint has been made to whatsoever kind of enforcement power given the UN in respect to the rights of participation. So that, at the end of the day, the most important aspect that has been emphasised seems to be the non interference principle in the internal affairs of a State.

In the same Resolution A/48/131 it deserves a little attention the paragraph 4, where is said:

[The General Assembly] recommends that the United Nations, in order to ensure the continuation and consolidation of the democratization process in Member States requesting assistance, provide assistance before and after elections have taken place, including needs-assessment missions aimed at recommending programmes which might contribute to the consolidation of the democratization process;

In these lines we can find a couple of interesting points. The most relevant is the mention made to a democratisation process. It is not a mention to any kind of right to democracy, but anyway it is an

important hint to the role UN has to play in the spread and consolidation of a process which is not called *participation* but *democratisation*. We could read in these line a first clear hint toward an explanation of the participation rights in terms of democratisation rights, and a push in the direction of making democracy as a synonym of participation. This interpretation could find support in the description made of the electoral activity which is seen as a part of a far wider process. This process is less *electoral* and more *participatory*, and it requires the UN assistance to be provided for a longer period, before and after the electoral event, as a part of the whole mechanism of political participation. But now the entire participation right is recognised as a democratisation process, and in doing so the *election clause*¹⁰⁸, namely the symbolic expression of the idea of democracy, becomes more and more the kernel that the participation process is built around.

By the way the Resolution takes care of the practical aspects as well, and for this reason it stresses the need the assistance has to be duly funded, and the crucial role the UN focal point has to play as coordinator of all the UN activities elections related.

Starting from 1995 the Resolutions changed the title which became *Strengthening the role of the United Nations in enhancing the effectiveness of the principle of periodic and genuine elections and the promotion of democratization*. No explanations are provided for this change. However it easy to imagine that the aftermath of the end of the cold war and the fall of the Berlin wall made the attention to shift from the statement of a principle, namely from the ideological field, to the practical implementation of the right to participate, and therefore to the very *role* of United Nations in promoting in practice the effective enjoyment of it. So now the focus of the Resolutions seems rather to shift towards the concrete actions the UN put in place to promote the participation right, and to make easier its realisation. But, what is particularly meaningful, in my opinion, is the hint, now in the very title, to the promotion of democratization. From now on, then, the attention will be on the promotion of democratization, certifying this way if not a complete shift of the attention from the participation to the *election clause*; at least an attempt to make participation and democracy to overlap upon each other.

However in the first Resolution with the new title, the A/49/190 one, there are no major changes in comparison to the previous one. New interesting elements can be found in the Resolution A/52/129, dated February 1998. First of all, in the fourth preambular paragraph we have the acknowledgement of the positive results obtained by UN assisting the elections in several States¹⁰⁹. The paragraph con-

108 See *supra* paragraph 3.2

109 “*Acknowledging* that United Nations electoral assistance has facilitated the holding of successful elections in several Member States, which has resulted in the orderly and non-violent assumption of office by elected officials, recognizing that elections can be free and fair only if held free of coercion and intimidation, and underlining the importance of respect for the results of elections that have been verified as free and fair,” UNGA Resolution A/49/190.

tains two interesting elements: the ascertainment that orderly and non-violent assumption of office by elected officials took place when the UN assisted the elections; and the importance, emerging for the first time in these Resolutions, of an environment freed from coercion and intimidation. This aspect is further explained in the Resolution A/54/173 where another meaningful element is added: the protection of the secrecy of vote¹¹⁰. Although it is nothing more than a restatement of what was already expressed in UDHR and ICCPR, the way the idea is expressed is completely different. It is not any more a statement of a rule or of a principle; but rather it is the acknowledgement of a concrete and factual element which qualifies a fair electoral process as the result of the increasing involvement of UN in supporting electoral processes. As the Secretary General writes in his Report A/54/491 of October 1999, paragraph 3:

Over the last two years 38 Member States made requests to the United Nations for electoral assistance. Since, in some cases, Member States requested assistance more than once during the reporting period, the actual number of requests totalled 48.

During these same two years the technical assistance has been provided to 31 States¹¹¹. It seems quite normal, then, that the basis of these new resolutions are built on the lessons learned on the field. For this same reason it is not surprising that the preambular section contains other practical remarks, such as the one noticing that the forms of UN assistance must change and adapt in countries where first-time democratic elections have already been held.

The Resolution A/52/129 is the first one to mention the electoral observation, seen as a part of the assistance programs. Such observation activity has to be performed in a comprehensive way, i.e. not limiting to the election day, but encompassing the entire electoral process, from the voter registration till the announcement of final results¹¹². In this way the Resolution sketches some methodological points that are still widely recognised as cornerstones of a well sounded observation. Beyond this mention of the electoral observation, there is a recall to the establishment by the Secretary-General of the United Nations Trust Fund for Electoral Observation, calling upon Member States to consider contributing to the Fund¹¹³. We can see in this paragraph a quite strong UN endorsement of electoral observation activity, even if only two years after the same UN will stop all activity of elec-

110 “*Acknowledging* that United Nations electoral assistance has facilitated the holding of successful elections in several Member States, which has resulted in the orderly and non-violent assumption of office by elected officials, recognizing that elections can be free and fair only if ***the secrecy of the ballot is protected*** and elections are held free of coercion and intimidation, and underlining the importance of respect for the results of elections that have been verified as free and fair,” UNGA Resolution A/54/173. The italic bold is mine.

111 “Over the past two years, the United Nations provided technical assistance in response to requests from 31 Member States” See Report A/54/491 paragraph 35

112 “Also recommends that United Nations electoral assistance be geared towards comprehensive observation of the electoral process, beginning with registration and other pre-election activities and continuing through the campaign, election day and the announcement of the election results, in instances where more than technical assistance is required by the requesting State;” UNGA Resolution A/52/129 paragraph 7.

113 UNGA Resolution A/52/129 paragraph 10.

tions observation.¹¹⁴

No relevant elements seem present in the subsequent Resolutions, up to the A/58/180 and A/60/1620 where it is possible to find the strong acknowledgement of the contribution from other international organizations -governmental and non-governmental- to the electoral process. Appreciation is expressed for the efforts UN did to improve the cooperation with such other international players, and doing so it is recognized that the support to electoral processes is a duty all the representatives of the international community have¹¹⁵. As a universal right, participation requires a common engagement, so that it is no surprising if UN encourages the involvement of the highest possible number of players. This involvement can become a way not only to make more effective the activity of UN missions, but even to disseminate the culture of the human rights and of democracy.

Some new elements appear in the Resolution A/64/155 dated 2009, in particular in the preambular section. The first two paragraphs contain a strong endorsement for the democracy¹¹⁶, a universal value (but not a right, however) based on the will of the people to be the master of their own lives. Depicted in this way the democracy seems to be a direct consequence of the principle tracing the origin of the power back on the will of the people, as declared in the UDHR.

Once more we have here a sentence which says that there is no single model of democracy¹¹⁷. This sentence echoes other sentences already noticed in the first Resolutions, where it is said that there is no single political system or electoral method equally suited to all nations and their people¹¹⁸. So the conflict we already talked about earlier in paragraph 3.1 appears now in the UN documents with the apparent conflicting statements: that democracy is a universal value, and that there is more than one possible model of democracy.

These sentences seem to be a kind of compromise between different political visions. We could try to make them consistent saying that the democracy is a universal value as a political idea, but is not universal as a political system. Or better, as a political system the democracy has to face the variety

114 "Furthermore, the United Nations has not observed an election since 2001." SG Report A/68/301 paragraph 3.

115 "Notes with appreciation additional efforts being made to enhance cooperation with other international, governmental and non-governmental organizations in order to facilitate more comprehensive and needs-specific responses to requests for electoral assistance, and encourages those organizations to share knowledge and experience in order to promote best practices in the assistance they provide and in the reporting they make on electoral processes, and expresses its appreciation to those Member States, regional organizations and non-governmental organizations that have provided observers or technical experts in support of United Nations electoral assistance efforts;" UNGA Resolution A/58/180 paragraph 6.

116 "Democracy is a universal value based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives" UNGA Resolution A/64/155

117 "*Reaffirming* also that, while democracies share common features, there is no single model of democracy and that democracy does not belong to any country or region, and reaffirming further the necessity of due respect for sovereignty and the right to self-determination," UNGA Resolution A/64/155

118 See for instance UNGA Resolution A/44/146: "*Recognizing* there is no single political system or electoral method that is equally suited to all nations and their people" (italic in the text).

of cultural, geographical and political traditions, and therefore necessarily regional differences have to be allowed to let the democracy to better fit to a multiplicity of situations. As already noticed, we are facing a kind of *platonic* problem, namely we have a universal idea of democracy on one side, and on the other side a number of real political systems which can be called *democracies* because they share some common characters with this universal idea. But what these characters are, how many of them are the minimal requirement for a regime to be called *democratic*, this is far from clear. We can maybe consider that the minimum standards for a political regime to be a democracy is “the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives”. But all of this is only the basis of the democracy, not the democracy.

Leaving aside these problems, the Resolution shows a few other new elements that we can quickly list. First of all for the first time, referring to Covenant, not only is quoted the ICCPR, but also the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Elimination of All Forms of Racial Discrimination. For the first time in the *Enhancing* Resolutions the right to participate is placed in the full frame of the UN tools referring to it.¹¹⁹

Another paragraph deserving attention in the preambular section is where it is emphasised the fundamental importance of the access to information and of the media freedom. This mention is interesting for at least two reasons: one is that there is a quite evident connection with art. 19 of UDHR and art. 19 of ICCPR. Never before, in this series of Resolutions, the right to participate has been connected with another political right. And in this case the connection is even stronger because the right to information is described as of “fundamental importance” for the promotion of free and fair elections. The other reason is that this acknowledgement entails a hint to the interconnection of all human rights, which is better expressed in another preambular paragraph of this same Resolution, where it is said that

democracy, development and respect for all human rights and fundamental freedoms are interdependent and mutually reinforcing,

So, we have interconnection among the human rights which is firstly stated as a universal principle, and then shown more in detail when the art. 19 of UDHR is referred to. Again, to be noticed is the

119 “Reaffirming the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Elimination of All Forms of Racial Discrimination, in particular that citizens, without distinction of any kind, have the right and the opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives, and to vote and to be elected in genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors,” UNGA Resolution A/64/155.

mention to the democracy. This time the democracy is considered a political element differentiated from human rights and to be promoted in conjunction with them. So basically we seem to face an ambiguous use of the notion of democracy: sometimes it is used a synonymous with participation, making it a human right; and at other times it is considered as an additional but interrelated element.

A last point to be highlighted is the paragraph where for the first time the importance of international electoral observation is recognised¹²⁰. It could sound quite weird this emphasis put on the electoral observation considering that UN, as we have already seen, is not observing elections since 2001. However it is just because UN is not observing elections any more that this point deserves a mention. Acknowledging the importance of electoral observation, UN recognises the important role of the other international actors, national, subregional and regional organisations, as well as NGO's.

The short analysis on this series of Resolutions has shown some interesting points. First of all we have seen how close the influence of the historical and political environment can be on the Resolutions. So we had a first period mainly focused on the condemnation of the apartheid regime using the participation right. Then, shortly after 1989, the focus shifted to democracy and elections issues, namely to a theoretical (political) and to a practical issue. On the practical side, the elections, we can see how the UN became more and more involved in activities election-related: the creation of a focal point, the increase of the activities of electoral support, the emphasis on the importance of the electoral observation. These activities have been favoured by the end of the cold war which caused the emergence of new democratic countries, and by the change of a number of political regimes all over the world. So in the nineties we see an increasing number of field operations and requests of assistance received by member States. These activities on the electoral field have a more political counterpart exemplified in the change of the title of the Resolutions, which stresses the promotion of democratization. But this move toward a clear recognition of the democracy is not taken to the extreme, because it is recognized that it does not exist a single type of democracy but a multiplicity of possible democracies, based on the different geographical situations. Anyway in spite of this general ambiguity, it has gained momentum the idea of democracy as a structural part of the right to participate, and for sure as an essential element for the full respect of human rights. In other words the democracy seems to be at the same time a human right and a necessary precondition for the human rights. As a final point the importance of the electoral observation and of the involvement of other international organizations in the democratisation processes has emerged.

120 “*Acknowledging*, in this regard, the importance of international election observation for the promotion of free and fair elections and its contribution to enhancing the integrity of election processes in requesting countries, to promoting public confidence and electoral participation and to mitigating the potential for election-related disturbances,” (italic in the text) UNGA Resolution A/66/163.

3.3 Support by UN system for new or restored democracies

This item was included in the agenda of the forty-ninth session of the General Assembly, in 1994, and was considered every year from the forty-ninth to fifty-eighth session (resolutions A/49/30, A/50/133, A/51/31, A/52/18, A/53/31, A/54/36, A/55/43, A/56/96, A/58/13 and A/58/281). With the Resolution 55/285 the General Assembly decided to consider the item each second year.¹²¹ The last Resolution is, so far, the 66/285 dated July 2012.

For the issues at stake here, these Resolutions are less important than the *Enhancing* ones. However they are related, starting from the title, to democracy and participation and for this reason they deserve some consideration. Therefore we will have a quick glance to them in order to single out the elements where electoral issues are dealt with, and to understand how democracy is seen. In all of them there is a constant cross reference to the Conferences on New or Restored Democracies, six conferences that starting from 1988 took place in Manila, Managua (1994), Bucharest (1997), Cotonou (2000), Ulaanbaatar (2003) and Doha (2006).

Starting from their title, which refers to a support by UN system for new or restored democracies, the resolutions show the attention devoted to the democracy in the frame of the UN activities. Generally speaking, all the major statements of these Resolutions somehow related to elections, democracy and participation build on the same background of the UDHR, and they confirm the general structure we have already seen and analysed in the *Enhancing* Resolutions series. So, for example, it is for the link, repeated in ten out of fourteen Resolutions, between the principles of UDHR and the foundations of any democratic society. However, focused as they are on the democracy, they contribute to build a system where democracy seems to become more and more a right and a synonymic term for participation.

Therefore, after emphasising in most of the Resolutions the close link existing between the human rights system and the democratic society, the Resolutions seem to build a strong framework where democracy is recognised, from a number of different perspectives, as a building block of the human right system and of the international relations. This way we can understand one of the tenets we have in all the Resolutions, namely that democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing¹²². The democracy is an important principle enshrined in the Charter of the UN: even if it is not explicitly placed between the human rights, anyway it is listed in the group of principles defining the international order all the na-

121 <http://www.un.org/en/ga/62/plenary/democracies/bkg.shtml> last browsed on May 15th 2015.

122 “Bearing in mind also that democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing and that democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and on their full participation in all aspects of their lives,” UNGA Resolution A/50/133. The same sentence is repeated in all the resolution till A/58/13.

tions aim to. What the democracy is, it is here explained with roughly the same words used in the *Enhancing Resolutions*: it is a political system based on the freely expressed will of the people to determine their own political, economic, social and cultural systems, and on their full participation in all aspects of their lives. A couple of considerations needs to be noted on this point. A first one is the evident similarity of the language of the resolution with the wording of art. 21 of UDHR. There we have seen the *will of the people* as the basis of the *power*; here we have the same *will* as the basis of the democracy. The unexpressed implication of this could be that the power, quintessentially, is the democracy; or that anyway democracy is the only manifestation of the (political) power responding to the requirements of UDHR.

The further problem seems to be, then, what kind of relation exist among democracy and *participation*, namely between the right protected by UDHR and ICCPR, and the political principle which is the aim of some of the effort of the UN. Participation is the pillar of democracy because the basis for the democracy is the will of the people to full participate in all aspects of their lives¹²³. The implication which seems to follow, is that the interdependence often established among human rights and democracy could be interpreted as if the human right to participate funds the democracy, being a pillar of it. So even if there is a mutual support between each other, the participation right is, if possible, and at least from a ontological point of view, more fundamental of the democracy. And even if clearly it is not possible to assert that the right to participate is the most important among the human rights, it seems possible to say that it could be at least a kind of *primus inter pares*, or the cornerstone where the other rights can find their stability and their realisation. And this could explain the reason why, as shown in a previous paragraph, there is only a right to participate and not a right to the democracy. There is not a complete identification between participation and democracy, otherwise we would be faced with the paradoxical situation where a human right, the right to participate, would be *inside* the human rights list, and *outside* of it as a political principle founded on the right to participate.

The interconnection is anyway very clear, and it is this background that UN build their activities of promotion of democracy upon. The democracy, because it is a principle supporting the human rights; because it is recognised as the political system which helps more than the others to prevent internal and international conflicts; because it contributes to the good governance; for these and other reasons it deserves to be promoted and supported by the international community and UN. This activity of promotion and support to the democratic regimes is commended by the UN General As-

123 "Reaffirming that democracy is a universal value based on the freely expressed will of people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives," UNGA Resolution A/60/253.

sembly¹²⁴. However, in spite of their intrinsic value of the democracy, all such UN initiatives have to be undertaken at the specific request of the Member States concerned. No need, here, to notice how the necessity to guarantee and to restate the principle of non interference is a strong principle at the basis of the UN construction; and how this principle creates, as we will see, contradictions and aporias. One of these aporias is the fact that a new international system which recognises the individual as the main actor of the political stage is still built upon an old post-westafalian idea of the nation-state, where the state can still protect itself behind an old idea of sovereignty.

In this series of Resolutions too, we can find the acknowledgement that in spite of the fact that democracies share common features, there is no single model of democracy universally valid, and that the idea of democracy does not belong to any country or region. Again we are here witnessing the very difficult exercise to set the democracy as a universal value, and at the same time to give her a local flavour allowing the possibility of different ways to be realised. As is has already been noticed, this is a very slippery path, but it is clearly a political compromise aimed not to make too disruptive the internal dichotomy of the universal value of human rights.

All the fourteen Resolutions of this series make references to one or more of the six conferences on new or restored democracies held between 1988 and 2006. No particularly new elements come out from the documents referred to, but we can find a confirmation of what has been collected so far. In all the conferences there is, of course, a strong endorsement for democracy: sometimes stronger, sometimes more nuanced. For instance in the Manila declaration democracy is given a moral superiority in comparison to other political systems¹²⁵. Democracy is not named explicitly, however when *the power legitimised by the will of the people* is mentioned, there is no doubt what the Declaration is referring to. This statement, strong as it is, sounds more like a kind of endorsement, and it can be a quite strong argument in support of the idea that there is an emerging right to democracy. Similar endorsements can be found in other documents as well. For instance in the final document of Bucharest Conference we find the statement that democracy is the political model best suited to ensure a framework of liberties for lasting solutions to the political, economic and social problems that our societies face¹²⁶. Even if this time it is not a matter of moral superiority, the superiority of the democratic system is widely recognised on the basis, we can imagine, of the better perform-

124 See, for instance, UNGA Resolution A/53/31 paragraph 4: “[The General Assembly] Commends the Secretary-General, and through him the United Nations system, for the activities undertaken at the request of Governments to support the efforts to consolidate democracy;”

125 “Convinced of the moral superiority of power which is legitimized by the will of the people, expressed in free and regular elections” Manila declaration A/43/538.

126 “Democratization is a world movement that affects North and South, East and West. In recent years there has been an almost universal recognition that a democratic system of government is the best model to ensure a framework of liberties for lasting solutions to the political, economic and social problems that our societies face.” Bucharest declaration A/52/334.

ances of the democratic regimes on political, economic and social field. The same idea is repeated a few years after in the eleventh preambular point, comma three, of the Ulaanbaatar conference where, even if the adjective *moral* is missing, however it can be read in the tone of the assessment:

Democratic societies have certain qualities which we consider superior to others, particularly those concerned with their participatory, representative and equitable nature;

This time we can read an apparent different explanation of the (*moral*) *superiority*. If previously it was the will of the people to legitimize the superiority, now it is the very idea of *participation* which makes the democracy a political system superior to the others¹²⁷. So, it is the *participation* the funding element, the model to compare to any political system and to define its sustainability. It is then fully consistent to declare that democratic governance is legitimate and responsive, representative and participatory, transparent and accountable, and rights and law based¹²⁸. In other words: superior. Here again there is no acknowledgement of a right to democracy, but we are very close to it. If there is a right to participate; if the democracy has a superior quality compared to other political systems just because it allows the participation in the better way; well, the right to democracy is just a step away.

Once the foundation of the democracy is set, it is matter to better define the content of it. This can be reconstructed through the references made in these same Declarations. So, we learn that democracy is a broad concept which is not limited to the exercise of personal freedom, but it encompasses the inter States relations and the human and social development. Such human and social development requires all the citizens to daily participate to political life of the country, which is possible if at the basis there is a free, inclusive and universal electoral process. In fact, only participatory democracy and decentralised government can genuinely bring about the exercise of people's sovereignty¹²⁹. So, as it is better expressed in the Managua declaration, democracy is an integral part of a process of development and reconciliation taking place inside a country, but with a meaningful spillover of peace and security at the international level¹³⁰. Democracy is the guarantor of a new

127 However, we could note here that it is written *superior to other* and not *superior to the others*. So if we want to interpret literally the sentence it is not completely true to state that the democracy is the best political system. I'm very prone to think, anyway, that this could be a linguistic trick to make this statement acceptable to a wider number of countries.

128 "ii. Declaring that democratic governance is legitimate and responsive, representative and participatory, transparent and accountable, and rights and law based" Ulaanbataar declaration A/58/387

129 "sharing a commitment to democracy which encompasses the exercise of personal freedom as well as the enjoyment of national sovereignty and development" Manila declaration A/43/538. " [We hereby declare] 3. Democracy is the best way to achieve human and social development which, on the basis of free and universal electoral processes, requires the daily and constant participation of all citizens in the permanent task of its enhancement and renewal" Managua declaration A/49/713.

130 "Recognizing the value of democracy as an integral part of the political, reconciliation and development process in national societies and of peace and security in the international community within a broader, more comprehensive concept of security," Managua declaration A/49/713.

idea of (human) security. It deserves to be shortly noticed here the hint to the electoral aspects of democracy and the role it is assigned to the electoral process.

Even if the way democracy has to be understood seems to be clear cut, the possibility remains to have different types of democracy based on the diversity of cultures:

Recognizing that the forms of our Governments vary because democracy always bears the imprint of our respective cultures¹³¹

This need of having different forms of democracy related to cultural and geographical differences is emphasised even more in the final document of Doha conference

Considering the need to develop home-grown democratic reforms to be pursued taking into account the distinctive cultures and traditions of each society while conforming with the spirit and principles of relevant international instruments,¹³²

So, there is a need to develop, depending on the different regions of the world, peculiar types of democratic reforms, which means that there is no single model of democracy, and that democracy does not belong to any country or region in particular¹³³. But now we have, though, a measure to be used to assess if the political form called democracy in the different regions is really a democracy. This measure is the participation. Thus, democracy can change from a country to another, from a political and cultural tradition to another one, but it remains a democracy as long as the principle of political participation is respected and implemented. It is, thus, easily understandable what is written in the Cotonou Declaration, when democracy is declared as a universally recognized ideal, as well as a goal, based on common values shared by peoples throughout the world community, irrespective of cultural, political, social and economic differences¹³⁴.

A last remark deserves to be written about the electoral process. We just noticed the importance of the electoral process in the establishment of democracy. Now we have to add that diversity in the democracies and in the cultures entails a consequent diversity in electoral processes as well, so that the electoral processes all over the world have to be based on national and regional particularities and various backgrounds with the final aim to facilitate the popular participation¹³⁵. The reason of this is very clearly expressed by Boutros-Ghali in his *Agenda for Democratisation* where, mention-

131 Manila declaration A/43/538.

132 See Doha declaration A/61/581.

133 "Reaffirming also that while democracies share common features, there is no single model of democracy and that it does not belong to any country or region," UNGA Resolution A/60/253.

134 See Cotonou Declaration A/55/889.

135 "Recognizing the richness and diversity of democratic political systems and models of free and fair electoral processes in the world, based on national and regional particularities and various backgrounds; Reaffirming the right of peoples to determine methods and to establish institutions regarding free and fair electoral processes and, consequently, that there is no single model of democracy or of democratic institutions and that States should ensure all the necessary mechanisms and means to facilitate full and effective participation in those processes," See Cotonou Declaration A/55/889.

ing his report "Support by the United Nations system of the efforts of Governments to promote and consolidate new or restored democracies" (A/50/332), he underlines how democratization must have indigenous support if it is to take root within a society".¹³⁶

In short we can find, again, in these Resolutions some now well known tenets as the link between human rights and democracy, and the need to find regional ways to make democracy possible through the participation. But more than in the other series emerges here the importance and a sort of superiority of the democracy in comparison to other political systems.

3.4 UN resolutions "Respect for the principles of national sovereignty"

This series of twelve resolutions, approved along a span of time from 1989 (A/44/147) to 2005 (A/60/164), is less rich than the others concerning electoral issues. During these seventeen years not many major changes can be observed¹³⁷, and the evolution we noticed in the other series in this case is less evident. All the Resolutions spin around the same points with a few changes, partly to be ascribed to the historical and political evolution. For instance the first Resolutions heavily emphasise, following the same path already noticed for the *Enhancing* series, the condemnation of the apartheid regime because it denies a full participation to the political life to a part of the people. A similar emphasis is put on the Palestinian situation: in this case from the first Resolution till the 50/172 one, the struggle of Palestinian people is recognised and legitimised as a case of anti colonial fight, aimed to gain the right to self determination. But the general framework where to put these resolutions is the worry of the General Assembly to guarantee the respect of principles of national sovereignty as a counterweight to what many States perceived as an unjustifiable extension of UN activity into the reserved domain of domestic jurisdiction.¹³⁸

In the first period the pattern of votes for this series of resolutions tended to be divisive¹³⁹; approaching the year 2000, thanks to some changes in both the text and the tone, it is possible to notice an increasingly consensual approach to the governing principles, including the international aspects of what had traditionally been seen as essentially national processes.¹⁴⁰

The complete title of the Resolutions in 1989 was: *Respect for the principles of national sovereignty and non interference in the internal affairs of States in their electoral processes*, but it was changed in 2001 (Resolution A/56/154) becoming: *Respect for the principles of national sover-*

136 Boutros-Ghali, B. 1996. paragraph 41.

137 A survey of the major changes can be found in Goodwin-Gill, Guy S. 2006. pp. 24 and following.

138 Goodwin-Gill, Guy S. 2006 p. 24.

139 For further details on this see: Goodwin-Gill, Guy S. 2006 p. 24 and followings.

140 Goodwin-Gill, Guy S. 2006 p. 25.

eignty and diversity of democratic systems in electoral processes as an important element for the promotion and protection of human rights.

The main conclusions of this series of resolutions faithfully reflect the two titles. So, basically all along the complete series we can find references to the art. 2 paragraph 7 of the Charter of the United Nations, where it is stated the principle of non intervention by UN in matters pertaining to the domestic jurisdiction of a State. The principle of self-determination is referred to as well, in order to state the right of the people to freely determine, without any external influence, their political status; and all along this series it is affirmed that it is solely the peoples to determine methods and to establish institutions regarding the electoral process¹⁴¹. Other relevant points of these resolutions are the prohibition for foreign states to interfere in the development of the electoral processes, and to found political parties; and the recognition that there is no universal need for the UN to provide electoral assistance to Member States, except in special circumstances¹⁴².

The main elements of analysis, too, are already present in the titles of the resolutions. Let start from the first title, where a connection is established between elections and national sovereignty. Why, among all the possible domestic political activities, just the electoral process is mentioned as particular case where the external interference is prohibited? The reason is that the elections are the process through which the power, and then the sovereignty, is legitimised. Therefore, it would be inconsistent to simply recognise the national sovereignty, without adopting measures preventing all kind of possible influences upon the very process which founds such sovereignty. So the connection is inescapable, and worth to be stressed. But, if this is true, the difficulty lies now in the fact that, as we have already seen, the question of the legitimacy of the power cannot be any more an exclusive domestic matter. So, the non intervention in internal affairs, i.e. the internal sovereignty, is granted only if the process which guarantees the legitimacy of the power is recognised as truthful, free, fair, and substantially correct. But this cannot be a purely domestic matter because, otherwise, we would face a vicious circle: the power willing to be legitimised would be in control of the legitimising mechanism. This means that some boundaries have to be put to the domestic jurisdiction, and that there is some kind of influence or control the international community should have on the States, limiting their sovereignty. Or that some sort of external monitoring has to be put on the electoral (legitimising) process. The process through which the power receives its legitimisation cannot be completely located in the domestic field, out of any external control if we want the process to be consistent.

On one hand, if the non interference principle is good, in particular to preserve the independence of

141 See, for instance, the three first dispositive articles of RES A/44/147; A/45/151; A/46/130.

142 See, for instance, A/46/130.

the smaller and weaker states, then, on the other hand, it put the process of the legitimisation of the power outside any international control. And it makes more problematic even the position of the individuals, which in the human rights system became the main subject of the international law. If a State does not respect the rights of the individuals granted by the human rights system, in this case all the rights connected to the participation (for instance if an individual has denied his own possibility to freely run for elections) who can legally guarantee the respect of such rights? So, the problem seems to lie in the fact that the title (and the Resolutions) stresses the respect of the national sovereignty *and* of the completely domestic control of the electoral process, closing in domestic borders events having, instead, domestic *and* external spillovers.

This attention paid to the elections, and the need to re-state the principle on non interference with particular attention to electoral process, is meaningful because it implies the recognition of the prominent role elections have in the political life of a State, and in the process of legitimisation building. So, any kind of interference in the electoral process is forbidden, and the foreign States are requested to “refrain from financing political parties or other organizations in any other State in a way that is contrary to the principles of the Charter and that undermines the legitimacy of its electoral processes”¹⁴³.

But is it possible to conciliate the non interference principle, with the activities of support to democracy and to elections which the UN sustains in other Resolutions? In these resolutions we can find a kind of evolving answer to this question. In the two first resolutions the question is not faced, but in the third one 46/130 it is plainly recognised:

[...] that there is no universal need for the United Nations to provide electoral assistance to member States, except in special circumstances such as cases of decolonization, in the context of regional or international peace processes or at request of specific sovereign States, by virtue of resolutions adopted by the Security Council or the General Assembly in each individual case, in strict conformity with the principles of sovereignty and non-interference in the internal affairs of States¹⁴⁴

The language is unambiguous. The GA this time recognizes there is no need to provide electoral assistance to the member States: the electoral process is a domestic issue which has to be managed domestically, and only a few, specific cases, and peculiar circumstances can justify external interventions in the form of electoral assistance. The decolonization process is envisaged and plainly mentioned as a specific case, while particularly sensitive peace processes can be imagined (the Palestinian or South-African situation is mentioned at the beginning). Any other request has to go

143 UNGA A/58/189.

144 UNGA Resolution A/46/130.

through the Security Council or the General Assembly and the possible intervention as to be *strictly* conform to the art 2 paragraph 7 of UN Charter. So, wide guarantees for the States have been set.

This goes on the same direction of a number of *Enhancing* resolutions, following which the electoral assistance can be provided only upon explicit request of the member state¹⁴⁵. What, however, changes is the tone and the wording, which in the *Enhancing* resolutions is toned down in comparison to the ones we are analysing. What makes the current resolutions stronger -beyond the always present reference to the self-determination principle- is the opening sentence denying the need of electoral assistance, and putting in the background the other possibilities. Anyway, this position from one side seems to respond to the need to set clear rules in order to prevent the least risk of an unduly international interference; but from the other hand it is clearly related to the particular historical period. The point is that, starting from the Resolution 50/172, even if the same content is proposed, the focus shifts again on the request by the member State to have electoral assistance, following the line of the *Enhancing* Resolutions.

4. Reaffirms further that electoral assistance to Member States should be provided by the United Nations only at the request and with the consent of specific sovereign States, by virtue of resolutions adopted by the Security Council or the General Assembly in each case, in strict conformity with the principles of sovereignty and non-interference in the internal affairs of States, or in special circumstances such as cases of decolonization, or in the context of regional or international peace processes;¹⁴⁶

The *special circumstances* now have been moved to the end of the paragraph, and the statement that there is no universal need for the UN to provide electoral assistance has completely disappeared. So, even if almost all the main elements of the past resolutions are still present, the very order of the words which changes the atmosphere, aligning this resolution to the *Enhancing* type. In other words, the conflict we started from still remains, but the toning down of the content, and the rearrangement of the sentences allows, if not to solve the conflict, at least to foresee, in the practical implementation, a smoother interpretation which can favour some kind of international involvement.

Anyway this shift from a generic non interference in all the aspect of the life of the States, towards a specific type, non interference in the electoral process, can be read as a further step in the direction of the recognition of the crucial role of the participation in the international system; and of the elections for a better set up and functioning of the democratic processes.

145 See, for instance, UNGA A/54/173; A/56/159; A/66/163; A/64/155 and son on, where it is said: “[The GA] Commends the electoral assistance provided upon request to Member States by the United Nations, and requests that such assistance continue on a case-by-case basis in accordance with the evolving needs and legislation of requesting countries to develop, improve and refine their electoral institutions and processes, recognizing that the responsibility for organizing free and fair elections lies with Governments”.

146 UNGA Resolution A/50/172.

A similar toning down can be retraced in some other spots of these resolutions. Lets compare, for instance, two paragraphs of the A/52/119 of 1997, and the A/56/154 of 2001:

Reiterates that, by virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right, freely and without external interference, to determine their political status and to pursue their economic, social and cultural development and that every State has the duty to respect that right in accordance with the provisions of the Charter;¹⁴⁷

Reaffirms that all peoples have the right to self-determination, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development, and that every State has the duty to respect that right, in accordance with the provisions of the Charter of the United Nations;¹⁴⁸

or two similar paragraphs from the A/49/180 of 1994, and the A/56/154 of 2001:

Recalling further the principle enshrined in Article 2, paragraph 7, of Charter of the United Nations, which establishes that nothing contained in Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require Members to submit such matters to settlement under the Charter,¹⁴⁹

Recognizing that the principles enshrined in Article 2 of the Charter of the United Nations, in particular respect for national sovereignty and non-interference in the internal affairs of any State, should be respected in the holding of elections,¹⁵⁰

In this second comparison the changes are still more evident. In 1994 the reference to the art. 2 paragraph 7 is very detailed with even a short summary of its content, while in 2001 it is much more generic. Only the article is mentioned, the general principles are recalled, and a quite surprising *should* introduces the respect of the article. Finally, the article refers only to the elections, and not, as it happens in 1994 to *matters which are essentially within the domestic jurisdiction*.

In 2001 the title was changed adding a new element: the respect of the national sovereignty and the democratic system are important elements for the promotion and protection of human rights. So we have the *human rights* shifting directly in the title. This can, maybe, help to make a better sense of the conflict we noticed at the beginning of this section. This reference to human rights helps to make clear that sovereignty and democratic system acquire a new value because of their functionality to the human rights system. So, any evaluation of their respect has to be measured on this background. And we could even go further, saying that the national sovereignty could be the final outcome of participatory processes, of the realisation of the self-determination right, and of the full respect of the human rights. Therefore, it should not be used as a shield for rigging the electoral pro-

147 UNGA Resolution A/52/119.

148 UNGA Resolution A/56/154.

149 UNGA Resolution A/49/180.

150 UNGA Resolution A/56/154.

cess, or to deny one or more human rights. So the sovereignty is an ambiguous tool which can be made properly working if there is a superior and neutral political instance able to evaluate the state's behaviours.

As far as it concerns democracy, participation and elections, we can find a number of interesting paragraphs deserving some attention. We can start with a paragraph stating the non universality of the electoral process models. For instance, these are the word used in the Resolution A/52/119 (1998):

there is no single political system or single universal model for electoral processes equally suited to all nations and their peoples and that political systems and electoral processes are subject to historical, political, cultural and religious factors.

And here the Resolution A/56/154 of 2001:

Recognizing also the richness and diversity of democratic political systems and models of free and fair electoral processes in the world, based on national and regional particularities and various backgrounds,

These paragraphs recall very closely some points from the *Enhancing* Resolutions concerning the democracy. For instance, what it is written in the Resolution A/66/163:

Reaffirming also that, while democracies share common features, there is no single model of democracy and that democracy does not belong to any country or region, and reaffirming further the necessity of due respect for sovereignty and the right to self-determination,

We can see how the two paragraphs are focusing their attention on the relativity of democracy, of the electoral systems and of the electoral processes. This parallelism is hardly surprising, given the close link existing among the two concepts. So in the *Enhancing* resolution the focus was on the idea of democracy as the best political system for the promotion of the human rights: it is the best system, but there is a multiplicity of instantiations according to the variety of cultural and political traditions.

This overall situation is fully consistent with a kind of self-determination that we find in the same A/56/154 Resolution:

3. Reaffirms the right of peoples to determine methods and to establish institutions regarding electoral processes and that, consequently, States should ensure the necessary mechanisms and means to facilitate full and effective popular participation in those processes;

The variety of democratic models, at the end of the day, depends exactly on the right of the people to determine its own peculiar and regional way to implement the right to participate, and to draw the technical tools to better realize it. The variability is, thus, widely admitted, and it is interpreted as

richness. The democracy can be therefore seen as a cluster of political systems sharing the common basis of being compliant with the participation rights.

It deserves to be emphasised the mention to *free and fair* electoral process, and not only because it is a plain reference to UDHR. For the first time in this series of resolutions the electoral process is qualified with the very clear aim of stressing how not every electoral process is a democratic one, and how not every electoral process can be admitted as compliant with the spirit of the Declaration.

Anyway we can appreciate here the internal dialectic not only among the two series of Resolutions, but among two key elements of the participation right. This shows the internal consistency of the UN policy: a same political line designed through a number of official documents stressing different aspects and perspectives about a same problem. On the other hand, while in the other series of resolutions the impossibility of a single model of democracy was a cultural opening to the regional peculiarities, it is important here, in a frame concerning the self-determination, not to interpret this as a political dodging in order to protect the states' sovereign prerogatives. But, again, if the sovereignty is a way to protect the interests of the smaller states from the external influences of the more powerful nations, it can as well be a way to legitimise possible deviant state's behaviours.

Finally, this established connection between the political system (democracy) and the technical way to express the popular will, both of which can be realised in a variety of different shades, becomes quite relevant. This connection, indeed, makes us glimpse the influence the technical aspect can have on the realisation of the main political goal, and how a political question can be determined and defined through technical choices. In other words, the choice of the technical system is not neutral in getting the targeted goal.

As further point to be shortly mentioned is the fact that in the Resolution A/52/119 religious factors were recognised as relevant in a process which should be entirely political, which is clearly a bridge offered for the consent of some political regimes strictly intertwined with religion. In the version of 2000, however, they disappeared.

A last remark concerns the crucial role attributed to the elections for the promotion and protection of the human rights in the resolution A/56/154 which says:

2. Reiterates that periodic, fair and free elections are important elements for the promotion and protection of human rights;¹⁵¹

It can be read along with other paragraphs from the same series:

Convinced that the establishment of the necessary mechanisms and means to guarantee

151 UNGA Resolution A/56/154.

full and effective popular participation in electoral processes corresponds to States¹⁵²

and

Stressing the responsibility of States in ensuring ways and means to facilitate full and effective popular participation in electoral processes¹⁵³

We have here the fully establishment of the States' responsibility in order the right to participate be fully and effectively enjoyed. And this cannot but be the logical implication of the non interference principle: if no one is allowed to interfere in the domestic affairs of a State, the only possible remaining option is the fully responsibility of the State for the implementation of the right. It is important to understand here the *responsibility* as a state's self-commitment finalised to the better implementation of the electoral process in all its aspects. Starting, then, from the voter education, to the freedom of speech and opinion, to the careful control of the electoral rolls, and so on.

So, in this series of resolutions we find some interesting points, we already noticed, but which here are seen from a different perspective. The non interference principle is the main point of these resolutions, and however its establishment shows a trend toward a less and less radical application and interpretation in order not to create a too harsh conflict with the principle of the popular sovereignty. In turn, this sovereignty requires a full fledged, and fully independent electoral process able to gain domestic and international credibility. So the election are a key element and the international community has to pay attention to them, but in a way which has to be respectful of the will of the people and of the autonomy of the state. Thus the principle of self-determination shed a new light on the possibility the democracy has to realise itself in a number of different ways. This is not any more a simple cultural tenet, but it acquires, in these resolutions, its full political meaning.

3.5 Boutros Ghali Agendas

Three very important documents defining the role of human rights, democracy and elections in the UN vision are Boutros Ghali's Agendas: *An Agenda for Peace* (A/47/227), *An Agenda for Development* (A/48/935), *An Agenda for Democratization* (A/51/761). Let have a closer look to each one of them in order to analyse some paragraphs where the issues of participation, democracy and human rights are tackled.

Following the chronological order we start with *An Agenda for Peace*. Even if the core of the document is the emphasis on the need for a comprehensive approach to peace and security, a few interesting hints are made to the topics concerning human rights, participation and democracy in para-

152 UNGA Resolution A/52/119.

153 UNGA Resolution A/54/168 (eighth preambular paragraph).

graphs 59, 81 and 82, and it is worth to spend a few lines in analysing what is written.

The paragraph 59¹⁵⁴ stresses the obligation of UN to support, upon request, the strengthening of new democratic institutions. This obligation stems from the very fact that an obvious link is recognised between democratic practices and the achievement of peace and security in any political order. This link entails that all those elements of good governance must be promoted by all the political communities. This same idea is further stated in paragraphs 81 and 82. In this case the UN Charter is explicitly mentioned, and the text of the paragraphs is rich in references to many of the ideas we already saw, creating a complex texture of cross references. Therefore, first of all, the link between respect of human rights and democracy is stated once again. The political stability, one of the most relevant elements for a durable peace, is fuelled by the possibility that the citizens have to express their own will, which we know is the basis of the legitimacy of the power. And in order a strong and reliable political institution be operative, participation is essential.

81. Democracy within nations requires respect for human rights and fundamental freedoms, as set forth in the Charter. [...] The social stability needed for productive growth is nurtured by conditions in which people can readily express their will. For this, strong domestic institutions of participation are essential. Promoting such institutions means promoting the empowerment of the unorganized, the poor, the marginalized. [...]

So in these lines we have a kind of compendium of the main topics of art. 21 of UDHR and art. 25 of ICCPR: democracy, development, respect of human rights, participation, popular will, foundation of the authority.

This paragraph 81 deserves to be compared with the following paragraph 82:

82. Democracy within the family of nations means the application of its principles within the world Organization itself. This requires the fullest consultation, participation and engagement of all States, large and small, in the work of the Organization. [...] The principles of the Charter must be applied consistently, not selectively, for if the perception should be of the latter, trust will wane and with it the moral authority which is the greatest and most unique quality of that instrument. Democracy at all levels is essential to attain peace for a new era of prosperity and justice.

Comparing the beginning of the two articles, we can appreciate the dialectic between the democracy *within* the nations, namely the democracy of the institutions of the individual states of the paragraph 81; and the *democracy within the family of nations*, namely the democracy on the international stage. For the first time in the documents so far analysed, the democracy is taken out of the borders

154 "There is a new requirement for technical assistance which the United Nations has an obligation to develop and provide when requested: support for the transformation of deficient national structures and capabilities, and for the strengthening of new democratic institutions. The authority of the United Nations system to act in this field would rest on the consensus that social peace is as important as strategic or political peace. There is an obvious connection between democratic practices - such as the rule of law and transparency in decision-making - and the achievement of true peace and security in any new and stable political order. These elements of good governance need to be promoted at all levels of international and national political communities."

of the individual nation-states to become an international (in the very etymological meaning of the word) question. So the basic democratic rules apply not only *inside* a state, but *among* the states as well. So that democracy and participation are universal values, are the basis of the mutual trust, and must be the rules governing the relationship between all political players, no matter if it is at micro or macro level.

To be noticed, as a last observation, that in the paragraph 55, the first of the paragraphs devoted to post-conflict peace-building, monitoring elections and promotion of formal and informal processes of political participation are listed between the main measures to be implemented for the consolidation of peace¹⁵⁵.

An Agenda for development is a UN document focused on the development, which is analysed following five dimensions emerged from fifty years of UN practical work on the field: peace, economy, environment, society and democracy. The section devoted to democracy¹⁵⁶ is entitled *democracy as good governance*, so that it is clear since the beginning that the perspective from which the issue will be considered it is not the strict political meaning of the word. This very title could seem a bridge to solve the problem of the universality of the democracy: if we can call *democracy* every kind of good governance, it will then be easier to find the democracy everywhere in the world, irrespective of the political system. But the problem would then be to define the *good governance*, to find the indicators for distinguishing what separates a good governance from a not good one, so that, at the end of the day, we cannot use this definition to bypass the problem we raised. So generally speaking the good governance, the democracy, will be a system which encompasses all the other four mentioned dimensions of development; but in no case we can consider it as an alternative definition of democracy.

Before having a quick look to this section of the document, a paragraph of the section devoted to the justice deserves to be analysed, because of the mention it makes of participation:

In helping to create the conditions within which social development can take place, popular participation at all levels of society is of vital importance. In order to fulfil their potential, people must participate actively in formulating their own goals, and their voices must be heard in decision-making bodies as they seek to pursue their own most appropriate path to development.¹⁵⁷

155 55. "Peacemaking and peace-keeping operations, to be truly successful, must come to include comprehensive efforts to identify and support structures which will tend to consolidate peace and advance a sense of confidence and well-being among people. Through agreements ending civil strife, these may include disarming the previously warring parties and the restoration of order, the custody and possible destruction of weapons, repatriating refugees, advisory and training support for security personnel, monitoring elections, advancing efforts to protect human rights, reforming or strengthening governmental institutions and promoting formal and informal processes of political participation." Boutros-Ghali, Boutros. 1992. paragraph 55.

156 Boutros-Ghali, Boutros. 1995. paragraphs 118-138.

157 Boutros-Ghali, Boutros. 1995. paragraph 108.

It is, of course, meaningful the fact that the idea of participation is connected with the idea of justice, because all in all the participation right is a *right*, namely something which the justice has, as a duty, to make enforceable and enjoyable. So the idea of popular participation sketched here seems to be not a political concept *strictu sensu*, namely it is not immediately related to electoral races, or to participation to political institutions. Participation here has a broader meaning encompassing all the aspect of the social life, a kind of general involvement in the life of the *polis*, not only in the ruling mechanisms, but in the civil aspects too¹⁵⁸. From this perspective the political aspect becomes a kind of result of this more general participation. There is, moreover, a sort of duty of participation where it is said that *people must participate*. So the involvement in the civil life is the *duty* to be an active participant in the processes defining the general goals of a project of society. Even if, then, it is not the human right at stake, a participation seen as a duty becomes the basis for transforming such duty in a right.

Section II E of *An Agenda for development* is then devoted to the democracy, putting the accent on the way it affects the development. Democracy, with its capacity to minimize the risks of internal instability, is a main element of a long lasting internal stability which, in turn, is the factor fuelling welfare and is the cornerstone of a full human development. Moreover the development is a product of the respect of human rights, and democracy is one of them if we consider it in the base meaning of *participation*. Democracy establishes the political the legitimacy of governments, and the same does the mandate of the people to govern. Finally the democracy, in the framework of the development, has to be considered as a process and not as a status: this is an idea which pairs with the one saying there is not a single instantiation of democracy. This evolutionary vision of democracy seems to be particularly targeted to the eldest democratic regimes, in order for them to be aware that democracy is not an acquisition once and forever, but it has to evolve and adapt to the evolution of cultures and societies. From the point of view of the development, this evolutionary understanding helps to better connect it to the democracy, and to make more evident their interrelations.

Just because the democracy is evolutionary, this means that the path toward it is not a one way only. Democracy¹⁵⁹, linked as it is to a number of economic, social and cultural factors, is seriously challenged by the worsening of economic conditions. And close attention has to be paid, as well, to the revival of fundamentalist, racist and anti-democratic movements, which mushroom here and there; and which could contribute to destabilize even societies where democracy seemed well established. In such a context, where democracy is a phenomenon with so many components, holding the elec-

158 See paragraph 2.3 and the distinction between participation as instrumental or as inherent good.

159 In this frame it should be more correct to use *democratisation* instead of *democracy* just to stress the process instead of the status. However for sake of simplicity in this context will be used *democracy*.

tions becomes only an element among a number of others, and the electoral process seems to lose the prominent place it was used to have under a more political meaning of democracy.

Anyway, whatever it is the meaning we are giving to *democracy*, we cannot restrain it to a domestic dimension. Thus the same way domestic democracy increases the possibilities of a durable and sustainable internal peace, international democracy can increase the possibility of peaceful international relations, which would be the best option for the peace and the prosperity of all the human community.

The last agenda, *An Agenda for Democratization*, is a paper rich in contributions and ideas where the Secretary General Boutros-Ghali describes the emerging consensus for the democracy and its translation in international norms and commitments by UN and other international players¹⁶⁰. We just limit ourselves to single out some few point of particular interest for the current topics, after mentioning that most of the relevant issues concerning democracy we analysed so far are echoed in this document. So, we can read that democracy contributes to preserving peace and security, securing justice and human rights, and promoting economic and social development; the distinction between domestic democracy and international democracy; the fact that there is not one single model of democracy; the support offered by UN to the democratisation process can be provided only upon explicit request of the assisted member State¹⁶¹.

First of all, we can notice in the opening paragraphs a definition of *democracy* and *democratisation*. So *democracy* is a system of government which embodies, in a variety of institutions and mechanisms, the ideal of political power based on the will of the people. This is a crucial point because finally we have a kind of causal link between the foundation of power and democracy. The democracy is a kind of power which is based on the popular will. And given that the popular will can change, the democracy is the system where the ruling authority periodically questions its own legitimacy through the electoral process. So we have democracy whenever the ruling power can show a believable popular legitimacy. There is a recognised variety of possible mechanisms and institutions to assess the popular will, which means that there is a number of political and technical systems, where the democracy can be embodied in. This reasoning helps us to understand why the elections and the electoral process are so fundamental for democracy, and the reason of their paramount importance in a democratic regime. So the will of the people is the foundation of the power, and of the democratic system at the same time, because the democratic system is the only possible manifestation of the popular will.

160 Boutros-Ghali, B. 1996 paragraph 56.

161 Boutros-Ghali, B. 1996 paragraph 16, paragraph 18, paragraph 4, paragraph 12.

Democratisation, on other hand, is the process leading to a more participatory and less authoritarian society¹⁶². Putting together the two definitions, it results in some kind of a rationale explaining why the participation is in the list of the human rights: it is because the foundation of the political power is not, as in previous historical periods, a matter of divine will or of imposition of strength. The power is founded on the will of the single citizen which has, then, the right to express, thorough the participation, his choice. The right to participate is, then, the right to give a contribution for the establishment of the power, whose ultimate goal is to rule in a way allowing every single person to realise himself as a human being.

The possibility for the democracy to be embodied in a number of different cultural and political traditions we have just seen, has a couple of implications which are hinted at in the paragraph 10. The first is that it not a task of United Nations to offer a particular model of democracy. The second, and more important one, is that the process of democratisation must originate from inside the society. This means that it cannot be an external imposition using political, military, economic or cultural strength; but that the quest for democracy has to be the outcome of an internal journey of awareness, and of elaboration of a peculiar political and technical model. Only this way can permit a viable way to democracy, because each society must be able to choose the form, pace and character of its democratization process. This same position is better and more in detail explained a few paragraphs later. In the paragraph 21 we can read a strong endorsement for the role of the State. It is said, indeed, that a fundamental prerequisite for the democratisation is the existence of a State able to create the conditions allowing the democratic institutions to grow and get stronger.

This suggests a fundamental prerequisite for democratization: the existence of a State which is able and willing not only to create the conditions for free and fair elections, but also to support the development and maintenance of the institutions necessary for the ongoing practice of democratic politics.¹⁶³

This, again, is a further demonstration of *realpolitik*. The basic political construction where to realise the democracy is the State which, despite its progressive weakening, maintains a key role in the international architecture. The old idea of State still remains the only possible environment where to let new political forms to grow. However, it has to be made clear not only that the political and economic evolution made outdated this seasoned concept of state; but, too, that the recent historical process of creation of the nation-state in some relevant areas of the world is helping to make more evident, if possible, such process of progressive ageing. This idea of state reveals itself less and less able to manage the evolving political, social, economic and cultural progress. So the question is if

162 Boutros-Ghali, B. 1996 paragraph 1.

163 Boutros-Ghali, B. 1996 paragraph 21.

the nation-state is really the right environment where to flourish for democracy. Or, said differently, if the State is the right political level where democracy can irradiate from. Is there really a necessary connection between State and democracy? If the democracy is the political form of the power based on the will of the people, it could be possible to think both to a smaller and local scale -in comparison to the State- where the power could be closer to the citizens; and a bigger international scale where democracy is the composition of the interest of various governmental and non governmental players. The *realpolitik* we mentioned, then, is only the necessity, anyway, to act and to promote participation and democracy in the current situation where the nation state is still one of the main the pivots of the international relations.

We could read in this light some later statements in the paragraph 64, where it is said that the democracy is, as well, the way to mediate the various social interests in a particular community¹⁶⁴. We do not have here any mention to political forms, but only to the idea of *community* where the democracy can be the ruling norm. What is interesting, then, is that here the democracy seems to be untied from a definite political structure, and seems to be the basic rule of every kind of community. Put in other words, it does not matter if a community is made out of citizens, or of states, or of international players of any kind: in any case the democracy is the political tool through which it is possible to find a sustainable and shared equilibrium, wherever a multiplicity of potentially conflicting interests requires peaceful solutions.

We could consider, then, the democracy as an adaptive tool to the political evolution. We promote it domestically inside the States as long as this political form is still valid or useful; but it can be applied to newer political forms with only possible minor changes, due to cultural and local traditions, as long as the basic rule is maintained: the popular will has to be the source of the power.

For the current analysis it is interesting to make a short reference to the first lines of the paragraph 19 where the connection between free elections, and the legitimacy of the government are clearly asserted.

Lacking the legitimacy or real support offered by free elections, authoritarian Governments all too often have recourse to intimidation and violence in order to suppress internal dissent.¹⁶⁵

Here a close connection is established between the lack of popular legitimacy provided by *free* elections, and the rise of domestic dissent which leads to intimidation and violence: in other terms in-

164 "Democracy is the way to mediate the various social interests in a particular community. In the international community, it is the way to promote the participation of all actors and to provide a possibility to solve conflicts by dialogue rather than by force of arms. The process of democratization internationally can therefore help promote peaceful relations among States." Boutros-Ghali, B. 1996 paragraph 64.

165 Boutros-Ghali, B. 1996 paragraph 19.

ternal instability with dangerous spillover on the international stage. All of this is another way to establish the tenet that democracy is conducive of peace, stability, development, prosperity at national and international level. The free elections mentioned here have not to be strictly considered as the elections we are accustomed to in western countries. Rather they should be considered as one of the possible models of popular participation, varying in time and space. What matters here, is that the expression is free, and therefore the outcome be a faithful mirror of the popular will. As a final remark, we can notice the lack of the adjective *fair* which usually comes along with *free*. This could be read as a first symptom for starting to get rid of a formula which, as we will see, is less and less able to catch the complexity of a proper electoral process¹⁶⁶.

Anyway, without democratic institutions popular unrest and instability will result, threatening internal stability and international order.¹⁶⁷ And if we translate *democratic institutions* with *participatory institutions*, i.e. if we use the *take part* wording of the Declaration and the Covenant, we have that popular participation is the cornerstone of whatsoever peaceful political and social structure. Democracy, then participation, beyond being a human right, is basically a practical necessity. Therefore it is not surprising that United Nations immediately after the end of the cold war increased the attention on all aspects related to democratisation and elections. However

Democratization requires a comprehensive approach, addressing not only the holding of free and fair elections, but also the construction of a political culture of democracy and the development and maintenance of institutions to support the ongoing practice of democratic politics.¹⁶⁸

Democratization, then, is not a simple question of political mechanisms, but it is a matter of political culture. The idea of participation, the principle giving the will of the people the task to legitimise the power, implies transparency, accountability, rule of law, namely a complete cultural environment where every step forward is a strictly necessary derivation of all the previous ones. And this is a further explanation of the reason why democratization requires to be locally developed¹⁶⁹: democracy can be fully implemented only where it is felt as a basic need and not a foreign, imported, model. UN can assist such cultural process through a series of activities most of which can take place in the frame of the electoral assistance¹⁷⁰. The range of available assistance, from assistance in the creation of a political culture in which democratization can take root, to assistance in democratic

166 See below 5.5, p. 140.

167 Boutros-Ghali, B. 1996 paragraph 25.

168 Boutros-Ghali, B. 1996 paragraph 124.

169 Mentioning the 7 August 1995 report, "Support by the United Nations system of the efforts of Governments to promote and consolidate new or restored democracies" and the report with the same title of 8 October 1996, Boutros-Ghali emphasizes that democratization must have indigenous support if it is to take root within a society. See Boutros-Ghali B. 1996 paragraph 41.

170 Assistance in creating a culture of democracy can take many forms and often is provided in the context of the electoral assistance. Boutros-Ghali, B. 1996 paragraph 42.

elections, to assistance in building institutions which support democratization is better detailed in the reports titled *Support by the United Nations system of the efforts of Governments to promote and consolidate new or restored democracies*.

We have shortly stressed in this paragraph some implications of the democracy: it is not just a matter of identifying the most suitable political system as a technical exercise; it is matter to understand the amount of spillover effects this system has on a number of aspects of the everyday life of the people. Peace, development, economy, environment, society, welfare: participation affects all these domains, both at domestic and international level. The very possibility for every single person to have and realise their personal life project is conditioned by the way their participations rights are respected and implemented.

3.6 The Focal Point for electoral Assistance Requests, the Electoral Assistance Division, and the other UN bodies

We saw in the previous sections how a number of official UN documents points at the elections as a pivotal moment both in the process of cultural awareness toward the democracy, and in the political assessment of the will of the people. It is, then, consistent with such line of thinking to find in the UN Resolution A/46/137 paragraph 9 the General Assembly endorsing the need to create a focal point whose duty is to assist the Secretary General in the activities of coordination concerning electoral matters.¹⁷¹ The Under-Secretary-General for Political Affairs is designated by the General Assembly as the UN Focal Point for Electoral Assistance Activities. He is responsible for the UN electoral policy and for ensuring system-wide coherence and consistency in all United Nations electoral activities. His role and tasks are detailed in the SG Report A/47/668 dated 1992. In general he is responsible for ensuring consistency in the handling of requests from Member States organizing elections. More in details the focal point:

... will assist the Secretary-General in coordinating and considering requests for electoral verification and will channel requests for electoral assistance to the appropriate office or programme, ensure careful consideration of requests for electoral verification, build on

171 “[The General Assembly] *Endorses* the view of the Secretary-General that he should designate a senior official in the Offices of the Secretary-General to act as a focal point, in addition to existing duties and in order to ensure consistency in the handling of requests of Member States organizing elections, who would assist the Secretary-General to coordinate and consider requests for electoral verification and to channel the requests for electoral assistance to the appropriate office or programme, to ensure careful consideration on requests for electoral verification, to build on experience gained to develop an institutional memory, to develop and maintain a roster of international experts who could provide technical assistance as well as assist in the verification of the electoral processes and to maintain contact with regional and other intergovernmental organizations to ensure appropriate working arrangements with them and the avoidance of duplication of efforts, and requests the Secretary General to designate such an official to take on these tasks.” UNGA Resolution A/46/137 paragraph 9.

experience gained to develop an institutional memory, develop and maintain a roster of international experts who can provide technical assistance, as well as assist in the verification of electoral processes and maintain contact with regional and other intergovernmental organizations to ensure appropriate working arrangements with them to avoid duplication of efforts.¹⁷²

Moreover, based on the Resolution A/64/155 paragraph 12, the focal point has to ensure coordination and coherence, and she/he has to avoid duplication of United Nations electoral assistance. In this context a further engagement of the Office of the United Nations High Commissioner for Human Rights is encouraged.

The level of detail of the tasks attributed to the focal point shows the amount of activities and implications stemming from the organisation of elections. A number of interesting informations can be deduced from the lines just quoted, first of all the careful consideration that every request of electoral assistance demands before being accepted (or rejected). We have already seen that there is no automatic UN support in case of elections¹⁷³. Each request has to be carefully evaluated, and there are some preliminary requirements to be satisfied before consenting the support. In no case electoral support can be seen as an unduly interference in the domestic affairs of the requiring State and, of course, it can be added that the requiring State has to show a certain amount of good faith and commitment in sustaining the electoral process and the UN activities. Moreover, other elements have to be evaluated, such as the potential impact that UN intervention can have on the domestic and on the regional political equilibrium; the pre-electoral conditions, namely if the environment is ready for an electoral process whose potential of disruption is well known; the possibility of a domestic ownership of the process; the level of inclusiveness, namely if and how women, minorities and under-represented groups are involved; cost effectiveness and sustainability. All these elements suggest that there is no such one principle like *one size fits all*, which means that there is not a universal scheme to be blindly reproduced on big scale for all the requests. Given the possibility of a larger number of different instantiations of democracy, every single intervention has to be planned following the peculiarities of the requiring country. UN is not a factory for democracy, but a fundamental institution which has to tailor its activities on the size and on the unique needs of the countries requiring its intervention.

Of course UN is not willing to have a monopoly on electoral support, and in the activity of drafting and implementing such activities it becomes crucial the involvement of other, regional and intergovernmental, organisations. It deserves to be considered that, in particular for the countries of new

172 Report of the SG A/47/668, II, A p.4.

173 And how in some resolutions UN declared the lack of a universal need to provide electoral assistance to Member States, except in special circumstances. See, for instance, Resolution A/46/130.

democracy, the elections are not only meant to choose a government, but they have a crucial role to educate to democracy as well. Supporting an electoral process, then, means not only to prepare, to manage and to guarantee the regularity of the elections; it means to take advantage of all the activities election-related, to create a cultural environment conducive to democracy. As we have already seen, the affirmation of the democracy requires endogenous forces and endogenous roots to properly grow. Therefore, the involvement of regional organisations, in particular the ones of the region the country belongs to, is functional to use some similar cultural and political tools, models and mechanisms, to create such more favourable ground to democracy. The idea is to propose, among the multiplicity of possible model of democracy, the one which can best fit to the peculiar situation of the requiring country, and so the activity of neighbouring states -geographically close and culturally similar- can be far more effective. Or, maybe better, to directly create from a deep knowledge of the environment an idiosyncratic model of democracy.

In order to assist the focal point with the above tasks, in April 1992¹⁷⁴ the Secretary-General created an Electoral Assistance Unit in the Department of Political Affairs through which all the assistance requests have to be funnelled. So, such a Unit will assist the focal point with the design and staffing of United Nations electoral activities, and maintains both the roster of electoral experts and the Organization's electoral institutional memory¹⁷⁵. Moreover it will take care of screening the requests, it will provide answer and support to the focal point, it will manage a roster of electoral experts, of the exploratory missions and, if requested, of the initial steps of the missions. Once the missions are up and running, the management of the process will be under the responsibility of the implementing organisation¹⁷⁶. Despite the number of requests that may be received, the Unit will remain small in size and will provide the full range of responses requested by developing a network of internal and external resources to support the Unit's objectives and by building up an efficient information system¹⁷⁷.

In early 1994 the Electoral Assistance Unit was transferred to the Department of Peace-keeping Operations. The transfer was made in an effort to rationalize the functions of both departments and to consolidate those Secretariat units working directly with the field. The Unit was renamed the Electoral Assistance Division and, as requested by the General Assembly, has continued to function under the regular budget and on the basis of existing resources. On this basis, one staff member from the former Centre Against Apartheid has been redeployed into the Division.

174 Report of the SG A/50/332 paragraph 42.

175 Report of the SG A/66/314 p. 1. Its task are further detailed in DPA-UNDP Note of Guidance on Electoral Assistance downloadable at the web address http://toolkit-elections.unteamworks.org/?q=webfm_send/169

176 Report of the SG A/47/668, II, A, 11 (p.4).

177 Report of the SG A/47/668, II, A, 12 (p.4).

As we have seen so far, the elections are something complex and multifaceted, and then a number of other United Nations departments, agencies, funds and programmes are also involved in the provision of electoral assistance, including the Department of Field Support, the United Nations Democracy Fund, the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Volunteers programme (UNV), the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), and the United Nations Office for Project Services¹⁷⁸. The main task of OHCHR is to monitor the human rights situation in the country during the entire electoral period and to foster an environment conducive to credible elections, and it also produces some guidelines on human rights standards applicable to elections. The UNV provides operational support for UN electoral field operations and complements the staffing of such operations with experienced professionals. Other bodies involved are the United Nations Office of Project Services (UNOPS), acting as a service provider for the UN system and for the member states, and the United Nations Development Programme (UNDP)¹⁷⁹. UNDP is the major implementing body for UN electoral support, providing technical assistance, mainly in development environments. It offers strategic assistance in supporting the design of more effective systems and mechanisms addressing disputes after the votes are counted, with the overall aim is to make the elections as far as possible credible and nationally owned. At the same time, attention is paid to increase the local awareness about the role the electoral process has as a part of a broader democratic governance framework, and a crucial element for the improvement of the human rights standard. UNDP manages some 40 to 50 field-based electoral projects per year and at the same time also engages with Member States on long-term capacity development, including the strengthening of electoral management bodies between elections. In addition to its field-based activities, UNDP produces important analysis on election-related issues. In 2013 UNDP provided electoral assistance to 68 countries in Asia Pacific, Africa, Latin America and the Caribbean, the Arab States, Europe and the CIS region.

A very important role is played by the Department of Peacekeeping Operations (DPKO): in peacekeeping and many post-conflict environments, assistance is generally provided through electoral components of field missions under the aegis of the Department of Peacekeeping Operations. In those cases, EAD works closely with DPKO in planning and managing electoral support aspects of peacekeeping operations, and provides technical advice and logistical support to national authorities¹⁸⁰.

The elections support activities are by nature unpredictable and complex, therefore regarding finan-

178 Report of the SG A/66/314, *Summary*.

179 The informations about UNDP role in elections have been gathered mainly from some internal pages of the UNDP and UN websites: <http://www.undp.org> last browsed on May the 15th 2015.

180 <http://www.un.org/en/globalissues/democracy/elections.shtml> browsed on May the 15th 2015.

cial resources, the UN system has several sources of extra budgetary funding just because of this necessity of flexibility. The primary sources of funding have been the United Nations Trust Fund for Electoral Observation and the UNDP Democratic Governance Thematic Trust Fund. The United Nations Trust Fund for Electoral Observation was requested by the Secretary-General in the Resolution 46/137¹⁸¹, and among the primary purposes of the disbursement of the fund for technical assistance there are contributes to research, project and studies, contribution to create and support networks of electoral institutions, activities of fact finding and needs-assessment missions¹⁸². The newest source of financial support is the United Nations Democracy Fund. The majority of resources for UNDP electoral assistance projects are mobilized from donors and government cost-sharing at the country level¹⁸³. Over the past 15 years, however, the nature of requests for electoral assistance has changed considerably, and the United Nations made their last observation mission in 2001. Therefore the Office of Internal Oversight Services recommended a revision of the title and terms of reference of the Fund, which is now the United Nations Trust Fund for Electoral Assistance, and which consists of voluntary contributions with no financial implications for the regular budget.

3.7 Guidelines

The UN Resolution 56/344 ANNEX II 3 describes the electoral assistance UN is supposed to provide the requiring States with these words:

The objectives of United Nations electoral assistance are two-fold: (a) To assist Member States in their efforts to hold credible and legitimate elections in accordance with internationally recognized criteria; (b) To contribute to building, in the recipient country, a sustainable institutional capacity to organize democratic elections that are genuine and periodic and have the full confidence of the contending parties and the electorate.

So, in full coherence with what we have noticed so far, there are two objectives drawn: a political one, concerning the holding of elections; and an institutional one, more targeted on the construction of a local structural capacity to deal with the democratic processes. And this second goal cannot be considered as fully distinguished from the construction of a cultural environment conducive to democracy.

The first guidelines on electoral assistance were provided by the Secretary-General in the document A/47/668/Add.1 dated 1992, but already the following year, during the forty-eight session, the GA requested the SG to update such guidelines¹⁸⁴. This has been done for the following session, and the

181 See also A/47/138 paragraph 5 and A/48/131 paragraph 5.

182 A/47/668 paragraph 20.

183 Report of the SG A/62/293, paragraph 31-32.

184 Report of the SG A/49/675 Annex III: "At its forty-eighth session, the General Assembly requested the Secretary-

new guidelines were released in the Report of the Secretary-General A/49/675.

In this second report, there are the main concerns of the SG. One is to stress the absolute respect of the national sovereignty: therefore a program of electoral assistance can be implemented only upon a formal request by the concerned State. And this point is nothing else than the re-statement of what has been written several times in the Resolutions. The second concern is to clarify that the aim of whatsoever kind of electoral assistance is to support the electoral process with the intent to build, in the short or medium run, a local national capacity of managing in its own the electoral process¹⁸⁵.

A primary reason for the creation of a specialized electoral unit within the Secretariat was to set up an institutional memory that would serve as a reference for the organization and implementation of successive missions. The Division will also prepare several handbooks on different aspects of standard electoral activities, providing information on different approaches used and evaluating the relative advantages and disadvantages, requirements for applicability and so on. The Electoral Assistance Division will also emphasize more detailed briefing of mission electoral staff, joint development of operational plans, and more regular field consultation visits¹⁸⁶.

The document containing the guidelines lists seven basic types of electoral assistance:

(a) organization and conduct of elections; (b) supervision; (c) verification; (d) coordination and support for international observers; (e) support for national observers; (f) observation; and (g) technical assistance. Within this general framework, the assistance modalities may be adapted, combined or modified in order to meet the particular needs of a requesting Government.¹⁸⁷

As it can be easily seen from this paragraph, the complexity of the entire electoral process emerges from the variety of possible support the UN system can provide a requesting State. These types are here listed in order of intrusiveness in comparison to the principle of the national sovereignty. More in detail, if the content of organization and conduct of elections is quite clear, the supervision activity is generally meant to take place in the context of the decolonization process, and often in the frame of larger peace-keeping operation. It requires the United Nations to certify all stages of an electoral process because they have to guarantee its ultimate legitimacy. Such kind of assistance, because of the level of control of the process infringing the sovereignty of the State, is not normally provided to Member States. In the case of the verification operations (type c), the UN task is to verify the national election authority activity, in order to assess freedom and fairness of specific and relevant aspects of the electoral process. This activity requires an extensive chronological and geo-

General to prepare a revised set of guidelines for consideration at its forty-ninth session; the revised guidelines were to reflect the experience gained over the last two years."

185 Report of the SG A/49/675, ANNEX III, paragraph 3 and 4, p. 27.

186 Report of the SG A/49/675 paragraph 10 and followings p.5 and followings.

187 Report of the SG A/49/675, ANNEX III, paragraph 6, p. 28.

graphical coverage and, at the end of the mission, the UN is expected to make a final statement on the conduct of the elections. Because of the strong level of intrusiveness they have, these first three activities require a formal mandate provided by the Security Council or the General Assembly¹⁸⁸.

The two mentioned pre-requisites are sufficient, instead, for the other four activities to take place, due to their far lower political profile. Thus, the coordination of international observers means that UN provide an umbrella framework within which international observers receive protocol, logistical and observation support, along with common briefing targeted to assure a consistent methodological approach. The support to national observers (type e) is an approach which best fits to countries that are relatively well developed and pluralistic, and already possess a viable community of non-governmental organizations willing to participate in national election observation. The simple activity of electoral observation by the UN (type f) is the least invasive activity. Its effects are judged negligible, and in comparison with the resources required to manage an effective observation mission it has to be implemented only in special cases. This helps to understand why UN stopped such kind of missions from year 2001. Technical assistance (type g) is the most frequently requested form of electoral assistance, and it is classified under three general categories: assistance contributing to national capacity-building; assistance related to the human rights aspects of the electoral process; and assistance providing specific legal, constitutional, logistic or technical advice as well as various types of electoral equipment and supplies. It may be provided as a component of the larger operations or provided on specific request¹⁸⁹.

This difference between the two types of support is due to the different conditions in which the elections can take place. They can take place in a State where there is a government fully in charge, and has a full control of the territory and of the institutions. In this case the UN backing can be limited to marginal aspects of the process, not affecting the substantial ones, namely the strictly political ones. But when the intervention requires UN to directly organise and conduct the elections, it means that most probably we are in a post conflict situation or, generally speaking, in a political situation where no other local and domestic institutions are able to properly take the ownership of the pro-

188 “Although the two preconditions outlined above generally apply to all types of electoral assistance, a needs assessment mission may not be necessary when a well-defined request for strictly technical assistance is received. For the first three types of assistance (a, b and c), however, a third prerequisite must be fulfilled. In order to undertake any of these types of operations, a formal mandate must be provided by the Security Council or the General Assembly.” Report of the SG A/49/675, ANNEX III, paragraph 7, p. 28.

189 The examples provided in the Report are: “ Technical assistance has been provided in the following areas: advice to electoral authorities; design or restructuring of electoral systems; computerization of electoral components such as registration rolls, vote tabulation and so on; civic and voter education; advice on the drafting of electoral law; constitutional reform; training of poll workers; boundary delimitation; design and/or preparation of a national identity card system; election organization and budget preparation; advice on election security; procurement of election materials such as ballots, ballot boxes, indelible ink and so on; and quick count and parallel vote count.” Report of the SG A/49/675, ANNEX III, paragraph 18, p. 30.

cess. Therefore the respect of the principle of non interference guaranteed by the art. 2 paragraph 7 of the UN Charter, requires that a formal mandate be issued. Therefore, not all kind of electoral support has the same level of intrusiveness.

In the paragraph we commented it is interesting the closing sentence as well, where it is said that the assistance modalities may be adapted. This sentence could sound quite trivial, but it could result more interesting if it is coupled with one of the many sentences we met concerning the various and local ways for the democracy to be instantiated¹⁹⁰. So the *particular needs* the electoral assistance could refer to are not strictly material needs, but they can be cultural and political as well. So what was a point of principle, a sort of relativity of the democratic process, is brought into the practice of a guidelines document. So, in spite of the theoretical problems concerning the universal value of the democracy, the UN recognise in its field activity the necessity of adaptive strategies to cope with regional and peculiar needs every requiring State shows.

The practicalities for that are summarised in the UN website¹⁹¹. To request electoral assistance a formal written request must be made by an organ of the member state having the authority to bind the state in agreements with the UN. Even if usually the National electoral management bodies do not have such an authority, however their requests can sometimes be acceptable, while are not acceptable, for clear reasons, requests coming from political parties, civil society, or other not governmental authorities. This formal request has to be very specific, in particular concerning the period for which electoral assistance is required. The timing, of course, has to be such as to allow all the feasibility activities to take place, and keeping in mind as well that many aspects of the electoral preparations cycle (for example the preparation of electoral rolls) requires a quite long activity and therefore have to start long before the electoral event. Requests may be sent to the relevant United Nations Representative at the national or global level, and forwarded to the Focal Point for Electoral Assistance, who is the Under-Secretary-General for Political Affairs. Normally, the request is evaluated through assessment mission conducted by the Electoral Assistance Division. Based on the results of the assessment, the Focal Point for Electoral Assistance decides whether the UN should provide support and what type of support to provide. After the approval, design and implementation of the proposed assistance is carried out by the relevant UN entity, in accordance with the finding of the assessment mission, and with advice from the Electoral Assistance Division.

190 See, for instance, UNGA Resolution A/60/253: "Reaffirming also that while democracies share common features, there is no single model of democracy and that it does not belong to any country or region,"; or Cotonou Declaration A/55/889: "Reaffirming the right of peoples to determine methods and to establish institutions regarding free and fair electoral processes and, consequently, that there is no single model of democracy or of democratic institutions and that States should ensure all the necessary mechanisms and means to facilitate full and effective participation in those processes,"; and so on.

191 See http://www.un.org/wcm/content/site/undpa/main/issues/elections/request_assistance last browsed on November 23rd 2014.

The basic principle remains, then, that UN electoral assistance and support for the promotion of democratization are provided only at the specific request of the Member State concerned, and that Governments retain the fundamental responsibility of organizing free and fair elections.

4 Other regional organisations

4.1 The European Union

Human rights, democracy, rule of law are at the heart of the EU construction, as it is expressed in the art. 2 of the Consolidated Treaty on European Union:

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Quite interestingly, in this article democracy is explicitly listed as a founding element of the EU structure, and it is differentiated from the human rights which are mentioned as a group without any further distinction among them. So, limited to EU position, we have here the acknowledgement that democracy is not in the list of the human rights, and that, along with them, it is a basic right, and a core element of the EU construction. It is possibly something more than a basic right: is a building block of the political structure, a previous and more fundamental element, whose existence is a kind of pre-requirement for the human rights to be enjoyed. It can be considered an essential element for the construction of the political space within which the rules of the game are further defined through the human rights system.

In the subsequent art. 10.3 of the same Treaty, it is further said that every EU citizen has the right to participate in the democratic life on the Union¹⁹². Here the right to participate is not simply the right to take part to the conduct of the public affairs (namely to the *political life*) of the EU; it is directly the right to take part to the *democratic life*. So, the activity every citizen has the right to participate to, is not a generic conduct of affairs, but it is a conduct of affairs which, since the beginning, is qualified as democratic. And this happens exactly because, as we have seen in the art. 2, the democracy is the political system which shapes the political space where the citizens can perform their right to participate. So, we have here not the partial merging we noticed between democracy and participation, but the democracy is merged with the politics *tout court*. This means that the only possible and admissible political space is the one compliant with the principles of the democracy, and managed following the democratic rule. So, inside the EU, the human right to participate is founded on the democracy chosen as the political system best fitted to express the European values. It is not matter, here, of finding universal values: we are here in a regional environment and it is

¹⁹² Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.

only matter to create a political (but not only) space shared by the States that voluntarily agree on these funding principles. This funding role of the democracy implies that it is the democracy which determines the participation procedures. The democratic model endorsed by EU is the representative democracy, with a direct representation of citizen at the level of European Parliament¹⁹³.

Some possible ways to participate to the democratic life of the EU are exposed in the art. 11, where it is said that the Institutions, from their side, shall give the citizens and the representative associations the opportunity to make known and publicly exchange their views in all areas of Union action¹⁹⁴.

This vocation to the democracy is not only one fundamental principle of the domestic EU political organization, but it is a core element of the EU foreign activity as well. Such position is made clear in the art. 21 paragraph 2 b) of the Consolidated Version of the Treaty, where consolidation and support of human rights is explicitly mentioned as an objective of the Union's foreign policy:

2. The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to: [...] b) consolidate and support democracy, the rule of law, human rights and the principles of international law.

It is not difficult to see the interrelation among democracy, the rule of law, and human rights; and the way how the good governance is founded on these three pillars. Basically the engagement of EU, following the words of this article, is to expand and bring on the international stage the same rights and the same principles informing the domestic action. So, when we are talking about founding principles and democracy, it does not exist any more a distinction between domestic and foreign policy. Democracy is then a continuum encompassing all the political structures from the micro to the macro level. The distinction between domestic and external political structures becomes meaningless, and the very idea of post-westfalian states gets more and more weak. The evolving idea of democracy shows its scarce compatibility with obsolete forms of political architecture. And the close connection with human rights, namely a kind of rights having as a main political subject the individuals, makes less and less relevant the old idea of the States as right bearers, and changes the foundation of the political power. For the EU, then, the democracy is the basic political structure, and every democratisation process sees genuine elections as an essential step to get the target¹⁹⁵.

193 "1 The functioning of the Union shall be founded on representative democracy. 2 Citizens are directly represented at Union level in the European Parliament." Art. 10 paragraph 1 and 2.

194 Art. 11 paragraph 1

195 "*Genuine elections are an essential step in the democratisation process. They pre-suppose the full enjoyment of a wide range of human rights and fundamental freedoms. The free expression of the political will of the people by a secret and equal vote, through a universal, fair, transparent and participatory election process represents a cornerstone of an inclusive and sustainable democracy*" Council Document 9990/01 - PESC 236 - DEVGEN 103 - COHOM 17 – 26/6/2001.

The positive effects of support for democracy, rule of law, respect for human rights and the principles of international law are certainly a strong contribution to the social and political stabilization, and to the prevention of short-term conflicts¹⁹⁶. In this framework the electoral observation activities can play a quite significant role in the short and in the long run. In the short run the presence of observers can help the stabilisation of the volatile political environments, decreasing the internal tensions and defusing the sources of possible conflicts whose outcome is always unpredictable. In the long run it is a fundamental brick of the institution building process, creating confidence in democratisation processes and in the democratic institutions. This would explain the crucial role of the electoral observation in the EU policy of human rights promotion. Human rights field missions and election missions are accepted as part of the mandate of the EU, whose treaty considers the protection and promotion of human rights as well as support for democratization as cornerstones of EU foreign policy and EU development cooperation. Regulations 975/99 and 976/99 of 29 April 1999 provide the legal basis for community activities intended to further consolidate democracy, the rule of law and respect for human rights.

4.2 The OSCE

The Organization for Security and Co-operation in Europe (OSCE, formerly CSCE) is an international regional organization with 57 participating States of three continents (North America, Europe and Asia). Its mandate includes, among other, the promotion of the peace, the control of weapons, promotion of human rights, the fight against terrorism and human trafficking, conflict prevention and resolution, democratization, electoral observation, gender equality, environmental activities, rule of law, and freedom of media.

Even if the very words *democracy* and *election* did not occur in the final act of the Helsinki Conference (1975), however in the 1990 Copenhagen Document of the Conference on Security and Co-operation in Europe, right after the fall of the Berlin wall and the end of the cold war, a series of commitment are made concerning free elections, universal and equal suffrage, electoral campaign, secret ballot, democratic system. These commitments, scattered all over the document recall, as to the content, and as to the way they are expressed, the UDHR art. 21 and ICCPR art. 25. We can use, as an example, the paragraph 6:

The participating States declare that the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government. The participating States will accordingly respect the right of their citizens to

¹⁹⁶ Mascia, Marco. 2006.

take part in the governing of their country, either directly or through representatives freely chosen by them through fair electoral processes¹⁹⁷.

As it can be easily noticed, we have here a summary of all the most relevant elements of the UDHR as follows: the will of the people as the basis of the legitimacy of the authority; free and fair elections to be held on a periodic basis, the right of the citizens to take part to the government, and the possibility of a direct or representative democracy. This sentence sticks so much to UDHR and ICCPR, that we can even find the same distinction between what we called *election clause* and *participation clause*, even if participation won't be explicitly mentioned any more in the OSCE documents. The elections, therefore, remain the main participatory process, and the one OSCE planned to take care of. The difference between UN and OSCE is due to the role of democracy. As we know, in the UDHR and ICCPR democracy is not explicitly mentioned, while for OSCE democracy -as we are about to see- is the cornerstone of the political building, the key element for a political field to be created. In effect in other posterior documents, for instance in the 1990 Charter of Paris for a New Europe, not only we can find similar ideas, but we can find also some more elements helping us to grasp which way to understand the democracy:

Democratic government is based on the will of the people, expressed regularly through free and fair elections. Democracy has as its foundation respect for the human person and the rule of law. Democracy is the best safeguard of freedom of expression, tolerance of all groups of society, and equality of opportunity for each person.¹⁹⁸

The two quoted paragraph together offer us the possibility to draw a picture: in the first quoted sentence we can read that the will of the people is the basis of a legitimate government; in the second sentence we have that the democratic government is based on the will of the people. The conclusion is then that a democratic government is by definition legitimised. Moreover we have that the elections must be regular and genuine, which is exactly the same prescription we can draw from the UDHR and ICCPR; and finally we have that democracy is founded upon the respect of the *human person* and of the rule of law. It is worthwhile to notice that the foundation of the democracy is not the respect for the human rights, but for the human person, namely that it isn't founded on a political corpus of norms, but on the primitive and pre-political acknowledgement of value of the human person. Human rights too are based on the respect of the human person, but from this perspective they seem to require anyway the existence of the political space to be implemented. The democratic space, for the OSCE vision, seems to be the best fitted for the human rights to be implemented.

197 The Copenhagen Document of the Conference on Security and Cooperation in Europe and all the other document which will be quoted can be downloaded browsing the OSCE official website at: <http://www.osce.org> browsed on November 23rd 2014.

198 Charter of Paris for a New Europe, p. 3.

Therefore, it is fully consequent what is said about democracy and which, again, echoes UDHR and ICCPR:

[The participating States] recognize that pluralistic democracy and the rule of law are essential for ensuring respect for all human rights and fundamental freedoms, the development of human contacts and the resolution of other issues of a related humanitarian character. They therefore welcome the commitment expressed by all participating States to the ideals of democracy and political pluralism as well as their common determination to build democratic societies based on free elections and the rule of law.¹⁹⁹

Again, most of the relevant aspects so far analysed are expressed in the just quoted sentences. The fundamental connection between democracy and respect for all human rights is confirmed, as well as it is confirmed the distinction between democracy and human rights. Democracy is, however, a preliminary condition for them to be respected, and a crucial and necessary ingredient for the optimal resolution of a series of (not better specified, but easy to figure out) related humanitarian issues. So, it is welcomed to the commitment to the ideals of the democracy; but, and this seems to be more significant, it is also welcomed to the common determination to build democratic societies. In other words the democracy, as it has been outlined, is the final political target of the institution building process.

The reason why the final goal is the democracy, and not any other political system, is due among the other, in this line of reasoning, to the existence of human rights. If there are some basic and fundamental rights recognised by all, which must be respected by all people and by all groups and institutions, and which must be enjoyed by every single human being; well, the democracy is the most reliable political system to get these results. In other words, if it is now true that some human right tools are binding, what it matters then is to find the best way for making them implemented and respected. Democratic regimes, as an empirical and logical evidence, are the best placed, among all the other possible political regimes, for providing such kind of guarantee. Of course it can happen that even democratic regimes do not respect human rights. But when this happens, in most cases it is only an unintended (or unexpected) effect of a transitory situation, quickly corrected exactly because one of the principles of the democratic systems is the compliance to the human rights. And moreover, by definition, the democracy owns in itself all the required the political resources to amend the possible flaws which could put it on the wrong track. So the conclusion could be that the democracy is not a human right, and that is not treated as such by OSCE; however it becomes a right when it is the main (only) way to give enforceability to the human rights system. The problem in this case is that, strictly speaking, we can define a right when we are inside a political system, but it is difficult to define something as a right when the political environment has not yet been set up.

199 The Copenhagen Document of the Conference on Security and Cooperation in Europe p. 2.

And this is the case of the democracy which is what create the best political space where the human rights are recognised and enforced.

Moreover, democracy becomes a right in the OSCE geographical space in the very moment where all the member States commit themselves to build democratic systems. This commitment has as a counterpart, at the horizontal level, the other member States whose task is to mutually watch each other over the respect of it. But at vertical level the counterparts are all the citizens: when the States commit themselves to the respect of the democracy, automatically the citizens can consider it an acquired, positive, right and they can claim on this basis the accountability of the State they are citizens of.

Besides all the theoretical reasons for supporting democracy, the practical rationale is epitomised in the Paris document:

We are convinced that in order to strengthen peace and security among our States, the advancement of democracy, and respect for and effective exercise of human rights, are indispensable.²⁰⁰

We see here exactly the same positions and the same arguments we have already seen in the UN resolutions, and in EU articles. Therefore, the interest of all of this is not so much in the argument used to explain the importance of the democracy, but rather it resides in the assessment of how the same reasons and arguments are used in different organizations, in heterogeneous political environment, in different parts of the world. This means that these ideas are spreading and affirming more and more all around the world; and it means, moreover, that they can get a particular, regional, flavour which differentiates each single instantiation; and that, in spite of this, no essential differences can be found in the instances.

A few words should be said to clarify the connection between democracy and rule of law which is the other essential element helping the respect of human rights. The rule of law in this Copenhagen document is defined not as a simple formal element in the enforcement of the democratic order,

but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression.²⁰¹

Democracy is founded on the rule of law²⁰², but in turn democracy is an inherent element of the rule of law, and in all the succeeding documents the two concepts are very often coupled and mentioned

200 OSCE Charter of Paris for a New Europe, p. 5. But see also, for instance, CSCE Budapest Summit Declaration 1994 p. 38 “Human rights and fundamental freedoms, the rule of law and democratic institutions are the foundations of peace and security, representing a crucial contribution to conflict prevention, within a comprehensive concept of security.”

201 The Copenhagen Document of the Conference on Security and Cooperation in Europe art 2.

202 See the already quoted Charter of Paris for a New Europe, p. 3.

together as they are in the present one.

It certainly deserves to mention art. 8 of the Copenhagen document, where the OSCE's mandate to observe elections derives:

The participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place. They therefore invite observers from any other CSCE participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law. They will also endeavour to facilitate similar access for election proceedings held below the national level. Such observers will undertake not to interfere in the electoral proceedings.

This endorsement is the logical consequence of the prominent role which has been given to the elections, and it is therefore consistent with it the creation of the Office for Free Elections²⁰³, whose task are detailed in the Charter of Paris.²⁰⁴ The original role of this office was to foster the implementation of OSCE commitments specifically in relation to democratic elections. In the year 1992, the Office was renamed the Office for Democratic Institutions and Human Rights (ODHIR) and its mandate was extended to other aspects of the human dimension, whilst with the Fourth Meeting of the CSCE Council of Ministers, held in Rome in 1993, the ODIHR role in the electoral processes monitoring was enhanced²⁰⁵. Shortly after, in the Budapest Summit of 1994, role and tasks of ODIHR have been still more extended and better defined²⁰⁶. So, a co-operation with other international players like, among others, the United Nations High Commissioner for Human Rights, it is envisaged with the idea of supporting the exchange of informations, and for further developing of future-oriented activities. Moreover, it is recognised that the electoral process is not a one day event limited to the election day, but that it is a more complex event. No much details are provided on this point, but a reference is made to the ODIHR task to play an enhanced role in election monitoring before, during and after elections. The Budapest Summit also specifically tasked ODIHR with *assessing the conditions for the free and independent functioning of the media* in connection with elections, which is a clear acknowledgement of the decisive role of extra political element in the outcome of the elections.

The importance of the elections, and consequently of the activities of electoral observation, is further stressed in the Charter for European Security, adopted at the OSCE Istanbul Summit in 1999. In this document we can find the following paragraph:

We reaffirm our obligation to conduct free and fair elections in accordance with OSCE

203 "We decide to establish an Office for Free Elections in Warsaw to facilitate contacts and the exchange of information on elections within participating States". OSCE Charter of Paris for a New Europe, p.13.

204 See OSCE Charter of Paris for a New Europe, p.18 and 19.

205 CSCE and the New Europe - Our Security is Indivisible Decisions of the Rome Council Meeting, p. 9

206 See CSCE Budapest Summit Declaration 1994 p. 29 and 30.

commitments, in particular the Copenhagen Document 1990. We recognize the assistance the ODIHR can provide to participating States in developing and implementing electoral legislation. In line with these commitments, we will invite observers to our elections from other participating States, the ODIHR, the OSCE Parliamentary Assembly and appropriate institutions and organizations that wish to observe our election proceedings. We agree to follow up promptly the ODIHR's election assessment and recommendations.²⁰⁷

This paragraph contains a few interesting points. First of all, a specific commitment of the participating States to invite ODIHR to observe their domestic elections. So, there is an engagement to open to OSCE, and to any other interested organization, the doors of the electoral process. And we know, now, that it means not only a superficial observation limited to the election day, but this means to open to a more thorough assessment implying electoral campaign observation, media monitoring activities, monitoring of the tallying activities and so on. Moreover, OSCE offers support and assistance for the development and the implementation of the electoral legislation. So, no details are left out in the effort to allow democratic systems to spread, to grow and to improve toward a model of democracy requiring cross check and support, because -unfortunately- the path to democracy is not a one way only.

Therefore, the elections observation is not an end in itself; it is not an exercise of institution management. It is a tool for having a democracy not crystallised in one unchangeable model, but to evolve and adjust its practice on the basis of the evolving political needs and on the basis of the suggested improvement coming after the electoral observations activities. This is the meaning of the final sentence of the paragraph just quoted. The idea to follow and comply to the ODIHR recommendations is the core of the matter. No democracy can consider itself fully accomplished, but every democracy, if it is a real one, submit itself to a system of checks and verifications and it is ready to amend every flaw and every shortcoming it happens to have.

4.3 The Organization of American States – OAS

The Organization of American States is an international regional organization of 35 members states from the American continent whose origins date back to April 1948. Its charter entered in force in 1951 and was amended several times, the last of which with the Protocol of Managua approved in 1993. The essential purposes of the organisation are listed in the art. 2 of the OAS Charter, and among them there is the aim *to promote and consolidate representative democracy, with due respect for the principle of nonintervention*. Among the other purposes we have: to strengthen the peace and security of the continent, the eradication of poverty, and the effective limitation of the conventional

207 OSCE Istanbul Summit 1999, paragraph 25.

weapons.

Democracy is not much mentioned all over the document, but the few references are generally meaningful. There is nothing particularly new in the OAS charter in comparison to the other documents we analysed so far. So the importance of the democracy resides in the fact that it is an indispensable condition for the stability and the development of the region²⁰⁸.

However, this time, the promotion of the democracy find a kind of limit in the respect of the principle of non intervention, which echoes the non interference principle contained in the art. 2 paragraph 7 of the UN Charter. This very point seems to be little bit problematic, in particular if it is compared to the provision of the article 9 of the OAS Charter, where the possibility is envisaged to suspend from the membership of the Organisation a Country where the representative democracy has been overthrown by force²⁰⁹. The suspension from the membership does not mean that the Country is abandoned to its own non-democratic destiny, because the suspension does not prevent some diplomatic initiatives be taken by the States of the Organization in order to restore the previous situation²¹⁰: so the democracy cannot be enforced, but it has to be encouraged with all possible persuasive means.

It seems, however, quite difficult to find a point of equilibrium between the two articles. We can imagine that article 2 could have been a way to defend from external interferences some non democratic regimes which at the time of the cold war were considered as a protective wall against the attempt of communist parties to gain the power in some Latin American countries; and on the other side a necessary acknowledgement of the current political landscape made out of autonomous states jealous of their own sovereignty. So we can consider relevant and significant the effort to limit this autonomy through a sort of regional control and diplomatic pressures.

Beyond these persuasive means, which can be imagined as some kind of political and economic pressure, the democracy could be promoted through cultural means as well, trying to build a culture of democracy starting from the individuals. So democracy can be seen as the natural outcome of a process of social and economic growth which impacts on the political structures. We could read this way the art. 47, where it is said that:

208 See OAS Charter, Introduction: “[The States represented at the ninth International Conference of American States ...] Convinced that representative democracy is an indispensable condition for the stability, peace and development of the region”.

209 See OAS Charter art. 9 a): “The power to suspend shall be exercised only when such diplomatic initiatives undertaken by the Organization for the purpose of promoting the restoration of representative democracy in the affected Member State have been unsuccessful;”.

210 See OAS Charter art. 9 d): “The suspension notwithstanding, the Organization shall endeavor to undertake additional diplomatic initiatives to contribute to the re-establishment of representative democracy in the affected Member State;”

The Member States will give primary importance within their development plans to the encouragement of education, science, technology, and culture, oriented toward the overall improvement of the individual, and as a foundation for democracy, social justice, and progress.

In the process outlined in these words, the democracy is the political ending point of a development process of the individual in the cultural, scientific and technological field. The cultural progress, and the improvement of the individual have, as a political effect, democracy, social justice and progress. So, the democracy is not the basis of the outlined process, but only one of the final outcomes. In other words what is sketched here is a process running in the opposite direction in comparison to the ones we have analysed so far, in UN documents for instance, where the democracy is the basis of any kind of human and economic progress.

A similar position is expressed in the art. 95 comma c 3:

In order to achieve its various goals, especially in the specific area of technical cooperation, the Inter-American Council for Integral Development shall: [...] c) Promote, coordinate, and assign responsibility for the execution of development programs and projects to the subsidiary bodies and relevant organizations, on the basis of the priorities identified by the Member States, in areas such as: [...] 3) Strengthening of the civic conscience of the American peoples, as one of the bases for the effective exercise of democracy and for the observance of the rights and duties of man.

Here the development programs and projects are aimed to build a civic conscience at the basis of democracy. Then, again, the democracy seems to be the final step of a path of consciousness and growth which can however take place in any unspecified political space²¹¹.

This interpretation can be finally reinforced reading the art. 2 comma g:

The Organization of American States, in order to put into practice the principles on which it is founded and to fulfill its regional obligations under the Charter of the United Nations, proclaims the following essential purposes: [...] g) To eradicate extreme poverty, which constitutes an obstacle to the full democratic development of the peoples of the hemisphere;

Again we can see here the same inversion: it is the eradication of the extreme poverty which drives to democracy, and not the other way round. It is not democracy the element promoting the development, but it is the development, in particular the economic development, which creates the bases of the democracy. Democracy is not the political space where all begins, the source of the power and of its legitimisation; instead it is the goal or, better, it is the manifestation, of a kind of ultimate and necessary achievement of an accomplished social, economic and cultural progress. So, it is now more clear the reason why democracy cannot be enforced: it is because as a result of a development

211 See also Inter-American Democratic Charter Article 12 "Poverty, illiteracy, and low levels of human development are factors that adversely affect the consolidation of democracy."

process, democracy cannot stand in its own, if its pillars are missing. But this time what are considered pillars of democracy are not only cultural and political elements, but economics and material ones. It seems to be as if the materials and economical goals can be reached through other political attitudes others than democracy. Democracy is anyway appealed to as the political basis for the solidarity among the states, and as a mean to get the targeted aims²¹².

No particular definition of democracy emerges from the document. However it deserves a mention the fact that the word *democracy* recurs eight times in the charter, and in six cases it is preceded by *representative*. This cannot be read as a restriction of the idea of democracy, but rather it has to be interpreted as a passage from an abstract idea of the democracy as a generic political principle, to a practice of democracy. In other words, this fine tuning of the abstract democracy does mean not the attempt to define an ideological position, but a concrete political system which is thought to be sustainable and viable in a given geo-political area.

As a last remark we see that the Charter does not mention at all of election, electoral processes, and participation. In spite of this, a close attention is devoted by OAS to elections and election observation based on some other documents, in particular the American Convention on Human Rights *Pact of San José, Costa Rica*, the Inter-American Democratic Charter, the Plan of Action of the Third Summit of the Americas²¹³. Such documents are at the basis of the OAS mandate for its action in election cooperation and observation.

The art. 23 of the Pact of San José, whose title is Right to Participate in Government²¹⁴, is where the participatory rights are affirmed. It is split in two paragraphs: the first repeats, almost word by word, the same content of the art 25 of the ICCPR. The second paragraph is, on its side, a statement concerning the rule of law, affirming that the law may regulate the participatory rights.

The Inter-American Democratic Charter is a more interesting document since its opening article, where it is stated that:

The peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it.

212 See OAS Charter, art. 3 d): “The solidarity of the American States and the high aims which are sought through it require the political organization of those States on the basis of the effective exercise of representative democracy”

213 All these documents can be downloaded at http://www.oas.org/en/spa/deco/electoral_mandatos.asp (last browsed on November 7th 2014).

214 1. Every citizen shall enjoy the following rights and opportunities: a. to take part in the conduct of public affairs, directly or through freely chosen representatives; b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and c. to have access, under general conditions of equality, to the public service of his country.

2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

So, we have here the straight acknowledgement of the right to democracy, and for the first time in this short review we find a document so explicit and direct. Even if in this first occurrence the democracy object of the right is not a qualified (representative) democracy, in the following art 3, where there is a kind of definition of the democracy based on its content, we have -again- the restriction we noticed before.

Essential elements of representative democracy include, inter alia, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government.

So, we can find here a comprehensive definition of the representative democracy which includes, among the others, the respect of human rights, the rule of law and the holding of elections. It is not surprising at all to have the elections among the key elements of this kind of democracy, given the fact that in a representative democracy the choice of the representatives is, clearly, a crucial point. So, it is exactly the OAS idea of the representative democracy as the kind of democracy referred to in all the most relevant points of the document, which funds the mandate and the role of OAS in the electoral cooperation and observations. The entire fifth section of the Inter-American Democratic Charter -articles 23 to 25- is devoted to the democracy and electoral observation missions stating some requirements and conditions for the States to ask for this electoral cooperation. Other practicalities are exposed at the beginning of the Plan of Action of the Third Summit of the Americas where, in the frame of an improvement of democracy, attention is paid to the electoral processes and procedures. So, mention is made to the sharing of the best practices and technologies to increase citizen participation, to the modernization and simplification of voter registration and the voting and counting process; to the enhancement of electoral mechanisms, using information and communications technologies; to the examination of other issues such as political party registration, access of political parties to funding and to the media, campaign financing, oversight and dissemination of election results and relations of political parties with other sectors of society.

4.4 The African Union

The African Union (AU) is a regional African organization which took the place of the Organization of African Unity (OAU) on September the 9th 1999 following the Sirte Declaration²¹⁵. Among the

215 The Organization of African Unity was established on 25 May 1963 in Addis Ababa. with 32 signatory governments and was disbanded on 9 July 2002 by its last chairperson, South African President Thabo Mbeki,

multiple purposes of AU there is the acceleration of the process of integration in the continent, the attention to the role of Africa in the new global economy, the attempt to address world multifaceted social, economic and political problems, compounded as they are by certain negative aspects of globalisation.

For the purpose of the present work, we choose to search the vision and the guidelines of the organization about participation, elections and democracy in a few major documents. In particular, thus, we will focus on the OAU Charter and the AU Constitutive Act; The African (Banjul) Charter on Human and People's Rights (1981 OAU); the Declaration on the Principles Governing Democratic Elections in Africa (2002); the African Charter on Democracy, Elections and Governance (Addis Ababa 2007).

The first documents are easy to be analysed because of the fact that the very terms *democracy*, or *elections* or *participation* never recur in the OAU Charter, and they recur in the AU Constitutive Act only in a few generic sentences mentioning *democratic principles* to be promoted or to be followed²¹⁶. Quite surprisingly, the same happens with the Banjul Charter, where no mention can be found of democracy or of elections. However in the art. 13 a mention is made to the right to participate²¹⁷, and it also recognises the right of the citizens to freely participate to the government of their country, directly or thorough chosen representatives. It is interesting to note that the article writes *chosen* where we would expect *elected*; and given the similarities this article shows with the UDHR, the choice to use a different word has to be meaningful. Of course to *choose* is not to *elect*, and in that way a completely different system of designation becomes admissible. Now, no ambiguity is left as far as it concerns the way to make the choice: it is a case-by-case issue which is regulated by the provisions of the (local) laws, which are established as the source of regulation and determination of the technical and legal mechanisms of choice. The question is, then, if it is possible to imagine, in a democratic political system, a democratic way of choice other than the elections, and, so, if these local laws can prescribe alternative methods for appointing the rulers, without getting out from the democratic rules. At this level the ambiguity remains, but we can try to interpret this ambiguity as an effort to find a difficult path to stretch as much as possible ideas of democracy

216 See AU Constitutive Act (http://www.au.int/en/sites/default/files/Constitutive_Act_en_0.htm last browsed on September the 8th 2014) preambular section: "DETERMINED to promote and protect human and peoples' rights, consolidate democratic institutions and culture, and to ensure good governance and the rule of law;". And also art. 3: Objectives. - The objectives of the Union shall be to: [...] (g) promote democratic principles and institutions, popular participation and good governance;

art.4: Principles. - The Union shall function in accordance with the following principles: [...] (m) respect for democratic principles, human rights, the rule of law and good governance.

217 Art. 13 1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law. 2. Every citizen shall have the right of equal access to the public service of his country. 3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

maybe not yet fully compliant with a number of local peculiarities.

So far, then, no strong guarantees for democracy, free and fair elections, participation rights have been defined through these documents, but only generic and weak references which do not compel the States to comply to particular prescriptions, but which can possibly be used -right now or in the near future- as a basis for building more compelling rules with a more strict -orthodox- democratic flavour.

The situation moved on with the Declaration on the Principles Governing Democratic Elections in Africa²¹⁸. This document opens recalling that the good governance has to be ensured through popular participation based on the respect for human rights and dignity, free and fair elections. The following section emphasizes the principles of democratic elections²¹⁹.

1. Democratic elections are the basis of the authority of any representative government;
2. Regular elections constitute a key element of the democratization process and therefore, are essential ingredients for good governance, the rule of law, the maintenance and promotion of peace, security, stability and development;
3. The holding of democratic elections is an important dimension in conflict prevention, management and resolution;
4. Democratic elections should be conducted:
 - a) freely and fairly;
 - b) under democratic constitutions and in compliance with supportive legal instruments;
 - c) under a system of separation of powers that ensures in particular, the independence of the judiciary;
 - d) at regular intervals, as provided for in National Constitutions;
 - e) by impartial, all-inclusive competent accountable electoral institutions staffed by well-trained personnel and equipped with adequate logistics;

It can easily be noticed how close are these lines to the main UN tools, in particular UDHR and IC-CPR whose all the major issues are repeated, with some update in the language, and some little adjustment in order to better fit the African situation. It results a kind of mix of theoretical points and practical suggestions which, however, are able to define a frame where to place participation, elections and democracy for the members of the organisation. In the lines just quoted, it sounds a little weird to read that the *democratic elections* are the basis of the authority, while in the UDHR, echoed by this sentence, is the popular will the basis of authority.

So, we are facing a kind of shift where what should be only a tool, the elections, is pointed out as the originating element. And, therefore, the elections -which could be seen as a technical tool to as-

218 Available at http://www2.ohchr.org/english/law/compilation_democracy/ahg.htm but not mentioned in the UA official website.

219 See: Declaration on the Principles Governing Democratic Elections in Africa section II: PRINCIPLES OF DEMOCRATIC ELECTIONS.

sess a political element (the will of the people)- become a political element in their own. Maybe this shift in the role and in the meaning can be explained with the title and the purpose of the document, particularly focused on the elections which therefore gain a particular importance and visibility. It remains, however, a little idea of confusion and ambiguity.

The Declaration proposes, in the next section, a plan of action including the responsibilities of the member states which, among other, have to encourage the participation of women in all aspects of the electoral process. It follows a list of rights and obligations under which the elections have to take place, such as full freedom to participate for all the citizens, as well as freedom of assembly and to freely express their opinion. But the citizens have some obligations, such as to respect the Electoral Commission and to refrain from violence and abusive language. This part concerning the obligations of the citizens can be better understood having in mind that the Banjul Charter contains some articles where some duties of the individuals are designed²²⁰.

Finally, some rules are established concerning the election observation and monitoring, and the role and mandate of the General Secretariat.

In the same line of the Declaration is the African Charter on Democracy, Elections and Governance. This last document, since the preambular section, seems to adopt an explicit language and a stronger engagement for democracy and participation, for example when it says:

Determined to promote and strengthen good governance through the institutionalization of transparency, accountability and participatory democracy;

It is interesting, here, the mention made to the *participatory democracy* which we could comment having in mind the reference made to the *representative democracy* which appears in the OAS document we analysed a few pages ago. We find then, in two regional documents, two different qualifications of the democracy to be sustained or targeted. What is meaningful in this difference is the very idea of democracy which can be qualified, as the target of the political will of the regional organisations, in different ways without losing its main character of being a democracy. In other words, we are here facing precisely what has been only sketched in the UN documents where the possibility of different ways for the democracy to manifest itself is envisaged. Therefore, here, both *participatory* and *representative* are manifestations of the democracy, the *same* democracy. They both participate (to use again a platonic language) of the same characters of democracy, but they do this in peculiar ways following the different cultural and political needs of the two regions. So, we can guess that *participation* and *representation* be the models which best fit with the differences existing between African and American states. From this point of view it could seem not only consist-

220 See The African (Banjul) Charter on Human and People's Rights, chapter II: Duties.

ent, but necessary, for regional organisation, to qualify the kind of democracy best fitted to represent the political peculiarities of the region. The only possible problematic point is that the regional organisations are not always so politically homogeneous as it could be supposed, and then that it isn't said that the same qualified democracy can really fit with the national needs.

The art. 2 of African Charter on Democracy, Elections and Governance, where the objectives of the Organization are listed, is still more explicit on the importance that democracy and election can have. So the first three point of the list of the objectives are:

1. Promote adherence, by each State Party, to the universal values and principles of democracy and respect for human rights; 2. Promote and enhance adherence to the principle of the rule of law premised upon the respect for, and the supremacy of, the Constitution and constitutional order in the political arrangements of the State Parties; 3. Promote the holding of regular free and fair elections to institutionalize legitimate authority of representative government as well as democratic change of governments;

The following art. 3 insists, with some additional detail, on the same direction. So the State Parties engage themselves to promote a representative system of government; to hold, on a regular basis, transparent, free and fair elections; to promote the effective participation of citizens in democratic and development processes and in governance of public affairs; to strengthen the political pluralism recognizing the role of the political parties²²¹.

The entire chapter 7 (articles from 17 to 22) is devoted to *democratic elections*. Roughly, there are three main sections, and each of them treats a particular topic. The first section (art. 17) contains some dispositions targeted to set a framework able to guarantee the fairness of the elections. The second section (art. 18) defines the possibility of a member state to ask for assistance, both from an economic or a technical point of view, in order to develop electoral institutions and processes. The third section (art. 19 to art. 22) is the most interesting one. In its first article there is an engagement of the member States to invite electoral observation mission from the UA countries. So, for the UA there is the acknowledgement that the electoral process, even if it is the crucial activity for the domestic determination of the rulers, cannot be any more considered a mere and exclusive domestic matter. The democracy, and the technical process needed to manifest it, are then acknowledged as a matter of concern for an entire community of States, and as something a State has to be held accountable for, in order to be a part of the community. The underlying admission is that democracy is the most effective way to regulate both domestic and international affairs, and an implicit link is established between the two levels of democracies which have to be interrelated. The democratic system is a single structure which has to operate at every level, and where domestic democracy helps to build a democratic international system and vice versa. Therefore, the external control over the

221 See African Charter on Democracy, Elections and Governance, art 3, in particular commas 3, 4, 7 and 11.

electoral process is a transposition on the international level of the system of controls which is one of the main characteristics of a democratic system domestically applied. Instead of having a domestic balance of powers controlling each other to guarantee a democratic equilibrium, there is here a kind of mutual cooperation among the states aimed to facilitate each of them in getting, strengthening and maintaining democratic institutions. It is like a social control, acting at the state instead that at individual level, which makes much less likely internal and external tensions.

The remaining articles are devoted to outline some key characters of the electoral observation missions and some rules to be respected in order to guarantee the effectiveness of the missions. So it is mentioned the necessity of the exploratory mission, the necessity of a full cooperation with the observers, the necessity of adequate economic resources. On the other hand, guarantees have to be given to the State whose elections are observed, about the impartiality and the professionalism of the observers.

So, for the AU as well, there is a commitment, required to the state parties, to promote democracy, the principle of the rule of law and human rights. And even if some ideas and some prescriptions suggest a space of ambiguity allowing possible local interpretation of the idea of democracy and election, however it is clear that the ideas of participation and democracy are key elements for the regional political building.

We have seen in the previous pages, how different regional organizations are unanimous in recognizing, at local level, the importance of human rights, participation, democracy and elections. Quite strong similarities in the language can be noticed in almost all the main regional tools, when there is no explicit mention of the main UN documents. On top of that, all the regional documents are very explicit concerning democracy. This can lead us to think that even if, based on the UN documents, there is not an explicitly stated right to the democracy, the spreading at regional level of a habit to democracy, or of a clearly asserted *right* to democracy (the OAS case), can make it a *de facto* standard.

However, we have seen as different regional organizations can put the accent on different type of democracy, showing in the practice what the UN documents we analysed affirm here and there, namely that there is not a single way for the democracy to be realised, but that it is the result of regional or local adaptations. Such adaptations and local adjustments of the practice of the democracy

do not mean to make the democracy a relativistic concept; they only represent a different way to make democracy properly work and fit the diversity of the human situations.

The fact that there is an emerging community of civil society organisations promoting democratic governance reinforces the principle that democracy does not belong to a particular country or to a particular culture, but that it is a universal right, and a universal value. Therefore, its universal achievement must be a central objective of an Organization devoted to the cause of larger freedom²²².

222 SG Report A/59/2005 paragraph 148.

5 Holding elections

5.1 Introduction

We have seen how the democracy, even if is not strictly speaking a right, however has become in the international praxis, and in the norms of international and regional organisations, a so crucial element that it is often considered a necessary pre-requirement for the states to be part of regional associations. The intrinsic value of the democracy is now widely recognised everywhere, and it is of particular relevance the instrumental value it has, to foster the economic and human development. It can therefore be said that there is a legitimate interest²²³ of the international community to bring about democracy everywhere. There is, thus, a good evidence that democracy, even it is not a right, is at least some sort of entitlement.

The dramatic global expansion of the democracy, and the promotion of the democracy of the last decades all over the world, led to focus on one political institution in particular: elections²²⁴. This is because the elections represent the most evident element where the right to participate manifests itself; and because, as it has been expressed several times in this work, they are the most efficient tool to express the popular will, which is the sole foundation of every legitimate power. After elections (properly hold), and once a legitimate power is in charge, no more external interventions are required from any other external player, and for this reason they represent, too, the exit strategy for most of the international missions after a crisis. In addition, the elections are a symbol of the (re-stored) democracy which, *per se*, has an intrinsic value: and for the stability of the international landscape, and for the social, economic, cultural development of the country. For all these reasons, in the agreements negotiated in post-conflict situations a clause concerning the implementation of democratic elections is routinely included. The elections, then, played a crucial role in the democratic transition of the end of the past century, and more and more they became a major requirement for the national government to acquire international legitimacy.

The occurrence of elections is now, for countries with an already established democracy, a periodic exercise of participation; but when elections are held in countries emerging from a crisis situation, they became a benchmark for the international community in assessing the institutionalisation of a peace process or, more generally, of an ongoing recovery process.

223 Bjornlund, Eric C. 2004. p. 22.

224 Bjornlund, Eric C. 2004. p. 7.

In the last section of this thesis we will particularly focus our attention on elections as a part of a democratisation processes, and not as the periodical expression of the popular will in the mature democracies. The perspective will be the one of the countries emerging from violent conflicts, the ones at risk of collapse due to the high level of civil violence, or to particularly unfavourable economic and political situations. The reason of such a choice is that in these countries, for political, economic, social reasons, or for a mix of them, the right to participate seems to be more in need to be fostered, sustained and improved. These are environments where the international community is more engaged in the promotion of institution building, and of democracy building activities.

In these countries the problem is from one hand the political one of how to generate the legitimate power founded on the will of the people, namely to manage processes designed to restore the legality established by the international obligations. On the other hand it is the technical one to guarantee the integrity of the electoral process, the *free and fair* expression of the popular will, and the correct implementation of the participation rights. This means to act following strict procedures fully respectful of the human rights system. It would be, indeed, internally inconsistent to recover the legal order in a country using methods and procedures which are not compliant with these same legal tools which the international community gave herself. But this means, too, to verify the technicalities, some seemingly bureaucratic aspects (census, electoral rolls, the drawing of constituencies, and so on), some good practices (concerning the timing, for instance), some not binding but largely shared rules (transparency and genuineness of the process), which cannot easily separated from the political aspects.

However, it seems that some times the international community is more focused on the first target, namely the recovery of the country, regardless of the full respect of some common sense best practices, which ends to make the recovery process more nominal than real. So, the elections become not exactly the exercise of the right to participate, and of that right to democracy more and more recognised in the practice. They, rather, become some times, only the exit strategy from situations where there is no long term political project of building a self sustainable democracy²²⁵; a short term solution after which the international community can disengage from an involvement which can be costly, and not always approved by the domestic public opinion of the states.

In the second case the elections are used just for their face value, as the most visible signal of a restored political normality: after the elections the country can be reconsigned to itself and to the people, regardless of how stable the new situation is. View from this perspective

democracy came to be seen by the United Nations and the international community more

225 Recently just only think about the Libya case and about the political result obtained rushing the 2012 and 2014 elections.

generally as an essential element of post-war reconstruction, with erstwhile conflicts to be transformed into peaceful electoral competition via ballots rather than bullets. As a result, elections have become a standard part of the prescription of contemporary peace building²²⁶

It seems to be just an ingredient of a recipe to be serially proposed in all the situations. But what matters, instead, is not to make this process a simple routine in the political life only meant to fulfil what is now felt as a duty. It has to be a fully significant process able to reflect the funding will of the people, therefore to be held in the most careful way and with the particular attention to all the details, taking care of particular needs of every peculiar situation, and using all the best practices available.

5.2 The standard model

The series of UN resolutions and regional documents analysed in the previous sections clearly show the increasing reliance of the international community on formal democratic mechanisms to choose the governance of a country. In particular in post-conflict situations, or in the aftermath of a singularly harsh political, economic, social crisis, the efforts are targeted to the elections as the symbolic event of a restored international legality. For implementing the electoral process a model has been developed and used: let see now the framework where the model has been developed, and how it works.

5.2.1 The framework

As any other political event, the elections can take place in a number of different ways, more or less close to an ideal standard of electoral conduct. This means that, as it keeps on happening in some countries, the formal and superficial aspect of the elections can hide mechanisms far from a true and effective democracy. So is, for instance, the case of some single party elections, or elections where the opposition is not free to properly run the electoral campaign, or where, in general, the electoral process is not really targeted to allow a real choice to the voters. So, just to oversimplify, we can have real elections, or apparent ones. These two elections lie on a same line, so that, if it is clear when the elections are fictitious, it is, however, difficult to define a clear watershed element beyond which the elections can be considered good.

The issues stem from the fact that the procedural and bureaucratic elements are an essential part of

226 Reilly, Benjamin. 2008. p. 181.

the democratic process which is, however, a mainly political process. To be clear: in order the political process take place in a proper manner, a number of administrative elements have to make their contribution and must be properly working. Lacking these elements, or in case these elements are not properly implemented, the entire political process can be considered flawed. Only to make an example of what we are saying, just think to the census: if there is not an accurate census it is virtually impossible to have an accurate electoral roll and, therefore, to guarantee that all the entitled voters can really exercise their right. So, for instance, in post conflict country, where the census data have been destroyed, it could be difficult in a short time to prepare elections.

Other fundamental elements for a proper conduct of an election could be related to the electoral administration. So, if the distribution of the polling stations and the polling booth is not carefully implemented, negative effects are easily predictable. A negligent design of their distribution can have as an effect overcrowded polling centres in urban areas, if too many polling stations are in a same place. The crowd can be an element of confusion, tensions and, at the end of the day, can dissuade people from voting. On the opposite in the rural areas we can have empty polling centres if they are too far from the villages and if the voters have to move for too many kilometres.

These are only small examples of how extra political elements can impact on the effectiveness of the electoral process. It is evident, besides, how every single one of these aspects if not properly implemented can cast shadows on the substantial genuineness of the whole process.

Seen in this perspective it could seem that elections are a kind of mission impossible, in particular in some areas where the logistic is far from being optimal. But due to the fact that the democracy is not a state, but a process, is it possible, however, accept some minor imperfections in the electoral mechanisms as long as they are an unavoidable spillovers of complex processes.

The point is, then, a new one: it is matter to evaluate in which extent the imperfections are the product of the limitations which the social, economic and politic environment impose, or they are the effects of a political willingness to cheat. And in the first case, then, how to evaluate these limits: if with a stiff way, or trying to understand the overall situation and applying an interpretative method. Whatever is the chosen method, there are anyway some minimal requirements to be respected, below of which the elections keep only a face value and loose any essential capacity to legitimise the power.

When we talk about minimal requirements for the elections to be meaningful, we are referring not only to the previously mentioned administrative questions. It is the whole general environment which has to be ready for the electoral process, and has to respect some minimal common sense standards whose absence can cast shadows on the reliability of the outcome. For instance, in a post

conflict situation a lapse of time for the country to recover is necessary before any election could take place. The violences still possible after a security crisis, the armed factions still existing in the country, the amount of available weapons: all of them are elements which can endanger the elections and the credibility of the results. So without a previous effective pacification process, and lack of safety, the elections risk to be only an empty political ceremony made to please the international community and little more.

Other important prerequisites are the following: a political structure in place, the state in control of the territory, a legal system up and running, economic resources available, as well as the political will of all the stakeholders, a cultural environment prepared for the democracy. So there is often a kind of trade-off between the duty to promote the participation rights and the local situations. Not only local situations are not always such to allow a sudden change from a dictatorship to the democracy, or from a warfare state to the democracy. A longer path could be necessary, and this longer time span is sometimes in contrast with the political agenda of the international community, and with the scarcity of resources which foreign donors are willing to invest. The problem is, then, to find an appropriate and sustainable equilibrium between these two conflicting needs.

These minimal requirements cannot be politically forced with the aim to allow the holding of elections at any cost. They have to be carefully considered not only in themselves, but in connection to each single peculiar situation. From this point of view some kind of weakness, e.g., in the census has to be differently considered if the country is emerging or not from a conflict; if the country was previously used to have a reliable census or not, if the current conditions (economic, geographic, cultural) allow in a reasonable span of time a recognition of population and voters. In other words, it has not to be used a blunt yes/no measure. A sound judgement has to be exerted and the whole of the context of a given country has to be taken in account. There is no space for stretching the situations following a political agenda whatsoever, but only space for a comprehension which adapts and interprets the norms and the standards to the situation.

So any kind of support to the democracy building or institution building in a given country has to be thought and shaped for that particular situation. And, if the international community is really eager to help the democracy building in a country sustaining the endogenous capabilities, it cannot neglect any little detail. There is no machine automatically producing democracy and participation in the countries; there is a long term engagement whose aim is to constantly improve the mechanisms of participation, whatever level has been reached.

Thus, it is no matter of simple implementation of surface aspects of democracy and participation. It is matter to make the respect of the international legal binding tools an opportunity to improve on

the way to the accomplished democracy.

5.2.2 The model

Following the end of the cold war, among the side effects the fall of the Soviet Union had on the global geopolitical situation there was a wave of democratisation processes, and elections related not only to the dismantlement of USSR, but as well to a series of peace agreements which ended long term conflicts in Africa, Central America and Asia. These peace agreements had in view, among other things, to hold democratic elections within a period of time whose length, however, was dictated more by the international agenda than from the local situation. In this wave of elections, three main typologies can be identified: first elections in the post soviet countries; elections in some African countries, where previous experiences with formal multiparty electoral practices were quite limited; and elections after the cessation of an internal armed conflict, often as an integral part of a negotiated settlement²²⁷.

Therefore, starting from the early 1990s, the international community, proposed a democratic reconstruction model which was applied, in a kind of serial way, to all the post-conflict or post-crisis situations²²⁸. The basic elements of this model were two. A military side aimed to the demobilisation of the former combatants, and the creation of a national army; a political side targeted to the construction of a democratic system, the approval of a constitution, of an electoral law, and the holding of elections.

The first experiences (Angola, Cambodia, Mozambique) provided some lessons to learn: that the elections need to be quickly followed by a general strengthening of the democratic institutions; the necessity of promoting the rule of law, the growth of an active civil society and of independent media; and the necessity of working on the security sector. All these additional requirements, and many others, which have been considered essential for the improvement of the model and the positive outcome of the international sustain, made, however, the model more complex adding a growing body of prescriptions. None of the added prescriptions, *per se*, had something wrong or unreasonable; on the contrary, it is matter of necessary and very important aspects to be taken care of. But, unfortunately, all these prescriptions, taken together, made the entire model difficult, if not impossible, to be fully implemented and managed. And this is even more true in some regions and countries where the starting standard necessarily fall short of the expected ones in the model. Quite often the involved countries simply do not have enough resources (economic or human) to realise what they are supposed and required to do. On the other hand, the help of the international community sometimes

227 Garber, Larry and Kumar, Krishna. 1998. p. 35.

228 All this section is mainly based on the article of Ottaway, Marina. 2003.

reveals insufficient, and in this way it stresses the gap existing between resources offered, time span allowed from one side; and the expectations raised and the benchmark established on the other.

So, the presence and the support of the international community plays an ambiguous role. From one hand the international role is crucial and remains central, because the grown complexity of the model requires a continuous engagement and support from the international players. From another hand the same community is required to find fast and viable exit strategies. But quite often such strategies are in conflict with the required accuracy and respect of the basic need of the participation rights. So if the model started with the idea to offer a quick and defined exit strategy -the elections and the legalisation of the ruling government- its evolution makes now more and more difficult to define a clear exit moment, because all the additional activities require time, resources, and involvement indefinitely postponing the full recover. The international public opinion, on turn, pushes for having quick and ostensible results, and to keep short the foreign intervention. In this way a trade off necessarily generates between the new complexity of the model, or, still better, between the necessity to plan country-specific tailored interventions, and the shrinking of the time available before the public opinion (or the scarcity of resources, or the political pressures) starts requiring the end of the operations.

Moreover the model, even in its simplest version, seems -in the best case scenario- to fit to small scale interventions, for instance in countries like Bosnia; but it seems very unlikely it can work in bigger countries like DRC. Some calculations made by Ottaway say that to replicate in DRC what has been made in Bosnia would require some 900.000 peacekeepers and administrators²²⁹.

So, it is clear that we have a standard model which, getting more and more complicated, risks to become too abstract and not really able to properly answer the concrete needs of a country. And it is as well clear that, anyway, not all the countries are in the same situation; and that, forcefully, some kind of adjustments are needed if there is a real will to obtain a stable democratisation.

In spite of this situation, however, no significant amendments have been provided to the model. What happened here is what often happens in the economic field, where a same model is *proposed* all over the world to countries needing economic recovery. In the same way a generic democratic reconstruction model is proposed as a standard intervention, regardless of the peculiarities that a local situation can have. It often seems that the international community is more prone to promote a *one size fits all* model, which in the long run can reveal unsuitable in many cases, instead of tailored interventions

229 See Ottaway, Marina. 2003. p. 318. I continue to refer to this article for the comparisons between Bosnia and DRC case.

At the end of the day, the standard democratic promotion model seems to be too complex and too costly to be implemented, regardless of the size of the country, of the political situation, or any other local peculiarity. It seems that it is thought to please the international community, and not to really fit to the peculiar needs of highly variable situations. So, it becomes an exogenous and imposed model, even if it calls for the democracy.

We have already stressed that the democracy cannot be imposed, because by definition it needs a consensus which has to be built not only as a political approval, but as a cultural acquirement. In order, then, to make more effective, realistic and sustainable this kind of intervention, a reflection is needed. A main change has to be made in the definition of the goal, which cannot be immediately a fully accomplished democratic system. In planning and designing the process, the question to be asked concerns, then, what is the minimally politically acceptable democratic system which can be sustainable in a given country, given a pre-existent political, social, economic and cultural situation. An intervention planned following such guidelines inevitably results scaled down in comparison to a radical version; but it can result, at the same time, better tailored to give sustainable democratic answers to the specific needs of a country.

The question is that the electoral process, as it happens for any political process, does not take place in a void. It takes place in a particular country, in a particular time, under economic and cultural conditions, and in an already populated political (and often military) arena. So, even after recognising the universality of the right to participate, we cannot ignore the *hic et nunc* of every single election. Thus an extensive comprehension and understanding of the local context in its historical, cultural, political, and sociological dimensions, becomes a compulsory requirement if the exercise of the participation rights has to be meaningful²³⁰. The point of principle of the respect of the participation right has, therefore, to be interpreted and understood in an overall frame which not always is the most favourable to its better implementation. So the field has to be prepared, but the conceptual tools too have to be prepared for the task.

This perspective on the democratisation, namely on the implementation of the right to participate, has to be very carefully handled, because it could have an impact on the other human rights: accepting different standards of democracy, or of participation, is in apparent contrast with the agreed idea that human rights are universal. On the other hand, however, it cannot be ignored that to insist on a single model of democracy clearly violates the common sense, and the words of some UN resolutions as well²³¹. If the idea of a plurality of possible democracies has to be accepted, then, it has to

230 Diamond, Larry. 2006. p. 102: "Inadequate understanding of the local context—including such vital issues as political leaders and alliances, historical trends and grievances, religious, ethnic and subethnic divisions, the sources of legal and illicit revenue, and the structure and loyalties of private militias— can be crippling."

231 See, for instance the already quoted Res. A/66/163: *Reaffirming also that, while democracies share common fea-*

be accepted as well the idea that no practically applicable standards can be implemented. Only guidelines and best practices can be useful, provided that they are stemming from the main international binding or customary tools.

Anyway a possibility not to create inconsistencies between universality and peculiarity of the participation rights, could be to pay attention to the distinction between *democracy* and *democratisation*, namely the difference existing between a process and a state. The goal is the realisation of an accomplished democracy, a system where the participation right is realised. The process to get this result, clearly, can take a number of different paths. Therefore the universality which is a necessary characteristic of the participation as human right, the state, not necessarily has to be shared by the process which leads to the democracy. Expressed with more precise words, we are facing two different ways of universality, so that the state and the process are universal in different meaning. The state in the more complete understanding of the word; the process in a derivative way, its universality depending on the target is trying to get.

In the practice of the field it is matter to accept that there are situations where it is impossible to construct (or reconstruct) a modern democratic state in a span of time acceptable by the public opinion, and economically sustainable by the international community; and where, therefore, the international community has to change the idea of social engineering preferring, rather, a smoother and less intrusive approach. What this less intrusive approach could be, it is not easy to determine but, basically, should be a kind of respectful backing of the institutions of country along the path to democracy.

This is an important step to increase the reliability of the international community face to the local population. Not only it is matter to help a democratic system to be implemented; it is matter as well not to raise in the local communities expectations which is now well known that hardly can be met. As we tried to argue, the standard model, risks to fail in its main goal to create a stable democracy just because of its standardisation. Some kind of media propaganda likes to let people believe that the intervention of the international community can be decisive in fixing crisis situations; and the standard model in itself seems to be conducive to the idea that the democracy can be restored with a standardized recipe. But this same idea could be dangerous considering the expectations it raises in the citizens of the country, and in the international public opinion. When the model is confronted with the unavoidable difficulties in its field implementation, the comparison between expectations and implementation can have a negative impact on the local population. This cleavage can be problematic for the missions in themselves. Too high expectations confronted with scarce results in the

tures, there is no single model of democracy and that democracy does not belong to any country or region ...

short and medium run, can undermine the trust of the population in the international support. It can affect the judgements about the professionalism of the involved agents, considered unable to cope with the problems; or directly the political will of the involved international institutions. Whatever it is, to loose the confidence and the support of the local population makes, in the short run, weaker the whole of the intervention. But it is problematic in the long run as well: the population steer at the international community as a democratic model, so that any failure of the community can be easily seen as a failure of the system ruling this community, namely the democracy. Thus, to raise expectations which cannot be meet, means to create a political and cultural environment potentially hostile to the rooting of the democracy. In this framework the commitment and the professionalism of the involved personnel is a key element, but a good and realistic planning it is still more.²³²

5.3 Timing

One crucial aspect about the elections is their timing, namely how long, after the end of a conflict, the elections can be safely held. Before answering this question, a few preliminary aspects deserve to be stressed. All of them could seem trivial, and, however, it happens that sometimes some of them are forgotten. The first is that the elections have to be reliable. This means not only that they have to be free and fair²³³, but that the result has to be trustworthy. In other words the elections cannot be held as a formal routine, but for the paramount role they have for the foundation of the power, they cannot be held but following, in a very accurate and careful way, all the necessary norms. The point is that not every political, social and historical environment is ready at any moment for the elections to be held.

A second aspect is that the democracy resulting from elections has to be sustainable, namely the new political regime has to have a long run perspective. The sustainability has to be understood considering all its possible aspects: political, social, concerning the security, and so on. The perspective of a political sustainability, if for instance part of the country is not under the governmental control, could be misleading²³⁴. So just holding elections without such long term perspective could result in backlash of trouble, non democratic regimes, reigniting of violence, instability. This backlash can have a number of negative side effects: in the short term because of the worsening of the situation; and in the long term, because it undermines the cultural and the political trust in the

232 The respect of the code of conduct and the behaviour in general of the personnel of the mission are other crucial elements for the positive result of the mission.

233 We are using here *free and fair* just to simplify. As it will be argued later, this wording is outdated and is not worthy to be used any more with reference to an electoral process.

234 Just think to the Libya case, for instance.

democracy, and possibly delays growth of a sounded democratic system.

Finally, the democracy (and the participation) is at the same time form and substance. Therefore, to promote only the formal aspect of the participation -the elections- just as a rite is completely ineffective. The formal aspect can be held only after a minimal set of requirements is satisfied, namely after all the pieces of the puzzle have been properly arranged, which means after the whole of the environment has been prepared for it. This is not always the case in post-conflict countries.

All these points seem to say, if it is still necessary, that not only the electoral process has to be carefully planned, but that it cannot properly take place if the general environment is not ready. This means, for instance, that in post conflict or recovering countries it is not wise to hold the elections before the situation is stabilised, which can take a certain while in many cases. Time is required, thus, not only for the technical and bureaucratic preparation, but also in order to create a social, political and security climate which could guarantee an effective implementation of the process.

“Elections are a hugely important part of any peace process but an election will produce all the good expected of it only if it takes place at the right time in the sequence of activities that constitute the peace process”²³⁵.

Election timing does not matter for countries with a democratic tradition and where the electoral cycle has already its pace, while for other countries earlier elections lead to more likely conflict recurrence.²³⁶

In spite of all of this, however, there seems to be a general trend to accelerate the elections in post conflict situations. The study of Brancati and Snyder²³⁷ shows how the average time between the end of a civil war and the first post-conflict elections fell down from an average of 5.6 years before 1989, to an average of 2.7 years since 1989 on. This decrease of the average time has certainly a political explanation due to the dramatic changes occurred after 1989 but, however, it is as if the international community thought that the sooner the elections will take place, the sooner the country will recover. Behind this drop of the average time there could be several reasons: possible economic difficulties in sustaining peace missions over long periods; a scarce strategic or political interest for a given geographical area; pressure of the public opinion to an early withdraw; and the emergence of new crisis areas requiring intervention, and so on.

The fact is, anyway, that there is frequently such a push to hold the elections as soon as possible, often with the idea that the elections, by themselves, have the power to suddenly establish peace and rule of law, regardless if the general situation of a given country is or not ready for a durable peace.

235 Brahimi, Lakhdar. 2007. p. 10.

236 Hug, Simon. 2011. p. 5.

237 Brancati, Dawn and Snyder, Jack. 2011 B. p. 470.

In the past decades many policy makers adopted the idea that the elections are a non problematic form of conflict resolution²³⁸. The experience has shown, instead, that they *may* have a positive impact on the resolution of some conflicts, and on the creation of new political orders, but some post-conflict elections have not been successful in meeting the goal of ending the conflict, and creating a democratic political system²³⁹. The reasons of these failures can be manifold, but the time factor is relevant for all of them. So, if for political and logistic reasons a certain amount of time has to go by after the end of a crisis and before the elections be held, this trend to reduce the time between recovery and elections seems to be not very wise. And some scholars think that too early elections can be at risk of the rejection of the results, and that can be the cause for a revival of violence²⁴⁰ empowering fighting factions instead of political parties.

However, this is not true under all the circumstances: for instance in post-conflict countries, when a decisive military victory of one of the fighting factions occurs, the risk of a reignition of the violence due to the elections is far lower. If the winners are a rebel faction it is possible that they may be willing to gain political legitimacy for their victory through the ballot boxes, so that the entire process could be encouraged. But, on the other hand, if the winner is an incumbent authoritarian government, maybe even in case of decisive military victory the desire for the elections could be not so strong, and little need can be felt to legitimize the rule through elections.

Another favourable condition for holding the elections in a short time after the recovery is when the international community engages itself to foster the re-establishment of the normality: helping the demobilisation (when needed), sustaining power-sharing agreements, providing significant peace-keeping missions, strongly sustaining the institution building processes. So there is not a clear rule, but what appears is that the evaluation depends on the local situation; and that, anyway, the engagement of the international community is strongly required for shortening the period before the elections. We are, thus, in front of a classical dilemma: time or resources. The shortening of the recovery period has to be paired with an increase of the international commitments; and if the elections represent an exit strategy, a target to be reached in the shortest delay, then the only opportunity to get this is a real and strong political, economic and institutional engagement to sustain the recovery process.

So, the international pressure for early elections is meaningful only if it is sustained by a strong involvement of the international players. The international pressure towards early elections can, thus, strengthen the peace process only if it provides stabilising tools. On the contrary, it can undermine

238 Reilly, Benjamin. 2008. p. 162.

239 Reilly, Benjamin. 2008. p. 158.

240 Brancati, Dawn and Snyder, Jack. 2011 A. p. 1.

the stability when it is not backed by effective means to achieve stable democracy²⁴¹.

This push towards early elections sometimes makes the elections to be held even before the political or military situation is fully stabilised, so that the combination of elections and ongoing tension can create conditions which can worsen the general environment. In fact it is sometimes neglected that the elections are, *per se*, a quite dangerous process.

Democratization by its very nature undermines established political orders, provides a pathway for new entrants to access the political system, highlights social cleavages, subverts existing power relations, and threatens incumbent authority. For all of these reasons, transitions to democracy in general and competitive elections in particular have the potential to be deeply destabilizing events²⁴².

This means that the electoral process cannot be implemented as if it would take place in an sterile chamber, but that there is a pre-existing environment which has to be analysed and understood before any initiative be taken.

Generally speaking, the decision about whether to hold an election or not, can also depend on the perception the winning part has about the political and military strength of the opposition. The implication is that, in any case, regardless how strong the external pressures or the international commitment are, there are domestic peculiar situations, with an existing balance of power, which can be more or less favourable for elections.

To say it better, the idea is that the international support to the democratisation process takes place in an institutional environment where a pre-existing government can be more or less prone to hold elections based not only on an objective assessment of the situation, but on its own convenience as well. Thus, as argued by Brancati and Snyder²⁴³, the situation where the elections have more possibilities to succeed, is where some kind of power-sharing agreements are in place. The guarantee for each competing political party (or faction) not to be wiped out after the elections, but to have the possibility of surviving and having some share of power, helps to make less harsh and dangerous the electoral contest. It has not to be forgotten that where the democracy is not fully established, the possibility exists for the losing party to be completely excluded from any power position, to lose the access to any kind of economic resource, to be exiled and, sometimes, to risk the life.

So, getting back to the timing issue, from one hand partisans of early elections sustain that an early electoral process facilitates peace settlements and encourage the foreign actors to engage in the reconstruction process having the perspective of a precise dead line -the elections- of their missions.

241 Brancati, Dawn and Snyder, Jack. 2011 A. p. 2.

242 Reilly, Benjamin. 2008. p. 161.

243 See Brancati, Dawn and Snyder, Jack. 2011 B. p. 470. "governments are also more likely to hold elections when power-sharing institutions, which reduce the likelihood of governments losing the elections, are in place".

Moreover, the elections appoint a legitimate post-conflict government reducing the costs for long and politically dangerous international missions. On the other hand, however, the opponents to early elections think that holding election too shortly after a conflict can undermine peace and democracy, because there is not enough time to properly design and implement all the necessary measures for free and fair elections. In this case the political results have then far higher possibilities to be seen as illegitimate, and the politicians can have an easier task to inflame the voters and reignite fights in case of electoral defeat. And still, again, early elections increase the possibility that the candidates are the same of the previous governments, or that the same warlords of the fighting factions take the control of the political parties. Early democratisation in fragile states is very likely to be conducive to internal conflicts in particular when the political elites feel threatened by rapid political changes, and when the popular participation is not preceded by the creation of strong political institutions.

On the other hand, even the postponement of the elections can, sometimes, be counterproductive, or dangerous. Just think about what it is happening in these days with the postponement of the presidential elections in Nigeria. Only ten days before the scheduled date of the elections, February 14th 2015, almost 25 millions out of the about 69 millions eligible voters had yet to receive the new biometric voting cards, according to the latest official figures. In Lagos, one of the main cities of the country and an estimated stronghold of the opposition, only 40% of the voters received the electoral cards²⁴⁴. In this situation it is not clear what is worst for the credibility of the process, the postponement of the vote, or to disenfranchise almost a third of the electorate. This situation has pushed, at the beginning of February, 16 small political parties to jointly threaten to boycott the polls if they are not delayed. The elections have, therefore been postponed for six weeks²⁴⁵.

The postponement is officially motivated not only with the significant number of voters which didn't receive the voter card, but also with the fact that the ongoing insurgency of Boko Haram rebels pushes the government to deploy troops in the northern regions, so that for the polling day there are not enough security forces to guarantee the control of the polling stations. But behind this postponement seem to lie more political reasons too. For the incumbent president six extra weeks could be very useful to rally support, to buy time and fight the opposition's rising support more aggressively, and undermine the candidate of the All Progressives Congress (APC) Buhari, which is gaining momentum. But the postponement will also fuel the long-running tensions between the two major political parties, and aggravate tensions between the north (largely Muslim and pro APC) and

244 See Financial Times of February 4th 2015 <http://www.ft.com/intl/cms/s/0/6c4551a4-ac84-11e4-9aaa-00144feab7de.html#axzz3REXrNtgO> last browsed on February 14th 2015.

245 See <http://www.ilpost.it/2015/02/08/elezioni-nigeria-rimandate/> last browsed on March 2nd 2015.

the south (largely Christian and substantially pro incumbent). This overall climate of mistrust could make more violent the ongoing clashes happening in the central states of the country between supporters of the two main candidates, and could provoke further violence. Moreover, as the role of the military in the postponement has raised serious questions about its political neutrality, opposition protesters may not accept the army as a credible peace enforcer if, as it seems likely, post-election violence erupts.²⁴⁶

There are two more reasons which make this delay problematic. First, because the reasons given by the government are not convincing. There are no reasons to believe that in six weeks the security situation could really improve, and a further postponement could trigger wider protests in the country. The other reason is the manner in which the postponement was pushed through. The decision to postpone the polls should have been the result of all stakeholder consultations and consensus rather than as a unilateral decision. At any rate the postponement is still within constitutional limit, but any further delay could lead to constitutional crisis, since the elections must be held at least 30 days before the swearing-in of the next government, which is on May 29.

Getting back to the main point, we can use the words of Diamond which express in a clear way what should be the approach toward the timing:

... if elections are to be truly free and fair (and democratically meaningful), there must be time to prepare them properly: time to construct electoral administration and disperse its offices and resources throughout the country; time to devise an electoral system that can provide the right kinds of incentives to restrain and transcend conflict; time to provide conditions of reasonable physical security for campaigns and voters; and time to register and educate voters, organize election monitoring, train political parties and candidates, and enable them to build their organizations and mobilize support. Again, during this time, some non elected authority has to rule. If that authority is international, the longer it rules, the more it risks a legitimacy crisis with the public it is trying to prepare for democracy, while falling into the model of “authoritarian state building.” If that authority is domestic, a protracted period of interim rule may enable the unelected political forces to entrench themselves in power, generating a severely “uneven” playing field for the elections when they do come.

Ill-timed and ill-prepared elections do not produce democracy, or even political stability, after conflict. Instead, they may only enhance the power of actors who mobilize coercion, fear, and prejudice, thereby reviving autocracy and even precipitating large-scale violent strife.²⁴⁷

So delaying elections to allow a period of institution building can help in strengthening the democracy²⁴⁸.

The international community has to be *community* in the true meaning of the word, and has to sus-

246 See the blog of the ICG <http://blog.crisisgroup.org/africa/2015/02/12/nigerias-elections-a-perilous-postponement/> last browsed on March 3rd 2015.

247 Diamond, Larry. 2006. p. 99.

248 For statistical support to this sentence, see Flores, Thomas and Nooruddin, Irfan. 2012. p. 559.

tain and follow the democratic process, which can often be long term and tiring. There should not be any worry about the length of the democratisation process, or about the economic costs of it. Lack of this full availability, which unfortunately risks to be the norm, the international community has, at least, the duty not to claim for engagements which cannot be sustained, and to be honest with the people of the concerned country. Building democracy starts building trust, in particular concerning the aims of any kind of foreign intervention, and the constraints this intervention has. To raise expectations which cannot be met, creates frustrations in both sides (in the public opinion of the country and in the international workers), and it shifts forward the establishment of the democracy.

As a conclusion of this paragraph we can mention the words of Reilly:

democratization is a long-term process of social and political development, rather than a short-term event run by the international community. But we forget this at our peril. The impact that external interventions can have on democratization -particularly in post-conflict situations- is largely limited to the design and construction of hardy institutions; the provision of adequate security and infrastructural conditions; as well as a modest input into the norms and routines of a first election. Beyond that, democracy is a domestic game, and its longer-term outcomes are very much the preserve of local actors and conditions. International interventions are crucial in putting in place the short-term conditions for a transition to democratic rule, but their longer-term impacts are necessarily limited.²⁴⁹

Anyway not even for the timing it exists a single and universal rule to be followed. Every situation has to be appreciated in its own peculiarities, and every decision has to be taken not in the offices but taking in account the reality of the field, and a number of variables. What can be considered sure is that to build a sustainable democracy every situation needs its own time.

5.3.1 The Guinea Conakry case

In 2015 the Guinea Conakry is due to hold presidential elections²⁵⁰. Strictly speaking Guinea is not a post-conflict country. Only low latency tensions are crossing the country, and however they are a good reason to raise questions about the opportunity to hold the elections, and the right timing for doing this. Guinea has, to some extent, a worrying electoral past. Democratic and competitive elections have a quite short history, and the last two elections, the 2010 presidential²⁵¹ and the 2013 legislatures, have been controversial. The electoral process, since the preparation till the announcement of the results, has been cause for protests and riots. In 2010, four months went by between the first and the second tour of the presidential, and the parliamentary elections -due to be held shortly

249 Reilly, Benjamin. 2010. p. 137.

250 If not otherwise specified, all the factual informations of this paragraph come from the Reports (Africa Briefing or Africa Reports) of the International Crisis Group available at : <http://www.crisisgroup.org/en/regions/africa/west-africa/guinea.aspx>

251 See International Crisis Group 178 2010.

after- took place only three years later.

Peaceful and credible legislative elections are essential to establish a parliament that reflects the country's diversity, give the opposition a real voice, restore checks and balances, and prevent the hope raised by the replacement of illegitimate military leaders with an elected civilian president turning into disillusionment.²⁵²

The international community, through a group of contact composed by members of African Union, CEDEAO, UN Office for West Africa, has been able to mediate and to manage the situation, and as a chief of the local electoral commission was appointed a non Guinean. In spite of all the efforts, the defeated parties (in both cases UFDG -Union des forces démocratiques de Guinée- and UFR -Union des forces républicaines) denounced frauds, and asked the elections be nullified, based on the reports of independent electoral missions (EU, Carter Center, EISDA). However, in 2010 the opposition accepted the results following the international pressure²⁵³; and the same did in 2013, considering that the 2013 elections were parliamentary, and then considered far less important in a presidential democracy. It is clear that with such premises it is not easy at all to plan an election, in particular after taking in account that there is not a widespread electoral consensus.

In 2012 the opposition's criticisms focused finally on two main issues: the Independent National Electoral Commission (INEC), and the Electoral Roll. The INEC has been contested for both its legitimacy and its efficacy. When INEC was set up, in 2007, the balance between the political parties was very different from the one emerged after the 2010 elections. The main change, in the meantime, was the disappearance of the party of the president Lansana Conté that at the time was accredited of roughly the half of the parliamentarians. So, the INEC became less and less representative and, following the declarations of the opposition parties, most of the INEC members joined the president Alpha Condé. As for the electoral roll, on the other hand, the opposition asked for its revision using as starting data the ones used for the 2010 elections. Doubts, however, have been raised concerning the enterprise charged to work on the roll. In this framework, some observers think that the president tried to further postpone the elections, posing conditions which for the opposition were unacceptable. Anyway, the suggested appointment of a new INEC took place allowing the governing coalition and the opposition to have the same number of members. But some questions concerning who was allowed to be defined as opposition, and further problems in the choice of the three representatives of the civil society made, again, the composition of the INEC debated, and not willingly accepted by all the factions. In spite of all of this, it has been precisely this new body in

252 International Crisis Group (ICG). <http://www.crisisgroup.org/en/publication-type/media-releases/2013/africa/guinea-a-way-out-of-the-election-quagmire.aspx> last browsed May 15th 2015

253 And still the acknowledgement of the electoral defeat is far more formal than substantial. See ICG Rapport Afrique N°199, 18 février 2013, p. 2.

charge to supervise the electoral process, to establish a calendar for the 2013 parliamentary elections, and to decide about the electoral roll. Given this situation it doesn't sound strange the International Crisis Group's (ICG) suggestion to recompose the INEC recognising its political character: all its members have to be chosen among ruling party and opposition, and its method of work should be the consensus.

The legislative elections of 2013 once more showed the ethnic polarisation of the country. The two main ethnicities, Peul and Malinké, sustained the two main political parties: the Cellou Dalein Diallo UFDG, the most important opposition party; and the Rassemblement du peuple de Guinée (RPG) Arc-en-ciel, the party of the ruling president Alpha Condé.²⁵⁴ Lack of strong institutions and sounded democratic tradition, this ethnic polarisation can risk to trigger a spoil system, making harsh the political fight. In an already experimented democratic regime the losing party, the minority, usually has a share of power, and the perspective to be the ruling party after a further election. But where the democratic system is not fully rooted, where the democratic institutions are not fully developed, there could be the possibility that the winning party tries to keep all the power (and the economic resources) for himself in order to prevent the opposition to win the next elections. In an ethnically divided political environment, such a risk can be seen by the losing party as a real threat to its own existence, and this can transform a political competition in a fight for survival, with all the easily imaginable implications.

A further, final, element characterises the Guinea situation, namely the necessity of holding elections at local level as well. The local authorities (*collectivités*) have an important role in the electoral administration and, unfortunately, in the previous elections some of them have been replaced²⁵⁵. Now, it happened that all of the replaced authorities were part of the opposition so that, even if it is not possible to positively affirm that they committed fraudulent acts, however the suspicion remains that the decision to replace them has not been politically neutral.

In the case of Guinea, we are far from the typical post-conflict country, and therefore the average times we referred to in the previous paragraph can be considered less meaningful. In this case there is no moment of starting recovery to count from, in order to calculate an optimal time for the elections. The elections should, rather, take place following the normal electoral cycle, say 5 years. Nonetheless it remains significant the question if, in a politically troubled situation, it is worthy to push for an election which risks to be, however, *early* if not in comparison to an hypothetical optimal time after the end of a conflict, at least with respect to a political situation, where previous experi-

254 "However, in Africa and elsewhere, because elections bring to the fore issues of identity, citizenship and rights and offer the opportunity for a head count, they are often the occasion for community mobilisation and some politicians base their campaigns on ethnic issues." International Crisis Group, Rapport Afrique 178 2011, p. 4 (footnote).

255 International Crisis Group, Rapport Afrique 178 2011, p. 16.

ences have shown technical and institutional weaknesses of the process.

The question is double. From one hand it concerns the political opportunity to held an election when, as we just mentioned, the electoral system has not a universal consensus, and the risk of rejection of the results is high²⁵⁶. The risk is to postpone too much the process, which could be seen as a kind of *suspension* of the democracy, keeping anyway only the mere appearance of it (the president has been elected through an election whose results have been accepted at domestic and international level). How long this *suspension* can go on; which domestic and democratic institution can decide when the right moment has arrived; in which participatory and inclusive way all these matters can be settled: all these questions are far to have easy answers. And, anyway, it is very clear that any possible answer depends on a deep knowledge and analysis of the Guinean peculiar situation, and that cannot be used generic instruments. And, just to mention one most evident problem, nowadays the spreading of the Ebola disease is having a social and economic impact on the Guinean situation: so how much this factor can impact on the decisions of the government to define a date for elections, has to be carefully analysed.

If, then, from this side there are reasons to be cautious and not to rush to the polls, on the other side there is the necessity not to create gaps in a democratic environment where weak democratic institutions, and still uncertain democratic traditions can heavily suffer for any least deviation from a standard procedure. It is a political matter, because any single one of these possible deviations can offer the opportunity to one of the parties to force and hijack the process; and because the local population, the voters, can loose confidence in the possibility that a true and reliable democracy can solve the political difficulties.

In this overall landscape, it is interesting to have a look to the suggestions offered by the International Crisis Group. It is interesting because these suggestions represent an instantiation of a case-by-case strategy which, regardless of any structured *classic* or standard intervention scheme, suggest concrete and specific initiatives to cope with the peculiar situation.

Therefore, beyond the very predictable suggestion to create an electoral consensus, and the conditions for a constructive dialogue among the government and the opposition, other proposals are made. Among these, it is interesting to find that the postponement of the presidential elections is considered an option²⁵⁷. This means that the close analysis made suggests a soft approach. It is considered that to fix an electoral calendar if the political conditions for believable elections cannot be

256 See International Crisis Group Briefing Afrique n. 106 2014 15/12/2014 p. 4.

257 "La discussion autour de ces chronogrammes doit permettre la définition d'un calendrier électoral, lequel ne doit pas exclure un report raisonnable de la présidentielle, si du moins ce report permet une véritable amélioration du dispositif électoral. Pour ce travail, chaque camp devrait pouvoir bénéficier de l'assistance de spécialistes mis à disposition par des partenaires internationaux de son choix." ICG Briefing Afrique n. 106 15/12/2014 p. 15.

met, could be not an optimal strategy. In this case could be far better to start with local elections to be held between three and six months before the presidential. This is due to the need for the newly appointed local political bodies to be fully in charge before the main national elections.

So, it is clear that even if from a technical point of view the organisation went on, this was not enough in order the elections to take place in an ordered way, and under widely agreed framework. The creation of the new INEC and the establishment of an electoral calendar have been only events with no real impact on the political situation, and on the confidence building process which is necessary for a democratic process.

Another interesting element which emerges from this case is the importance of shared rules. Well before the electoral event which formally and officially appoints a democratic government, it is important that an environment -cultural and political in the first place- ready to accept the democracy is in place. Democracy is rule of law and shared rules. But shared rules and democratic agreement are preliminary to the formal birth of a democratic government. In order to free and fair elections take place, in order the will of the people is truthfully expressed, the playground has to be set through mutual agreement. In other words democracy requires democracy, which means the availability of all the competing parties to prepare all together the field where to play, and the rules of the game. A substantial democracy, accepted as a main goal between the competing parties, is the basis for the formal *and* substantial democracy to be built. Better said, it is needed not only a constituent phase, but the democratic will to accept all the rules and the constraints the democracy requires, included the possibility of being for some time the opposition.

So to make all possible efforts to be stuck to an electoral calendar knowing the weakness of the political, institutional and technical frame, seems not to be a wise long term strategy. In a situation where the democracy is not still stabilised, where the institutions are not strong enough to guarantee a normal calendar a better solution seems to be to adapt the calendar to the contingency. It could be better a formally weaker democracy which has, however, grown following the necessities of the country, than a seemingly stronger one imposed from outside, or bluntly promoted only to comply to external obligations. The planning has to adapt to the reality and not vice versa.

5.4 Elections as a technical process

5.4.1 Material aspects and electoral administration

We have already hinted several times at how the democracy is a political and a technical issue at the

same time. Or, better said, we have seen how entangled are the procedural and the political aspects of the participation rights. Now, it becomes very important to keep in mind this distinction because, as it is well expressed by Pastor²⁵⁸, when most people think of electoral systems, they do not think of the conduct of elections but rather of constitutional questions, for example, a presidential or a parliamentary system, or of election procedures or practices, such as campaign finance. In spite of this, the electoral administration, namely the technical elements to properly conduct an electoral process, are key elements having effects both on the political outcome of the elections, and on the formal validity of the process itself.

The technical elements of conducting an election are carefully listed by Pastor²⁵⁹. In the pre-electoral period, whose time length can considerably vary, it is possible to identify a first phase of planning and design some preliminary elements, such as the definition of the boundaries of the voting areas, the approval of the basic rules to appoint the electoral officials, the choice of a voter registration system, the identification of the polling stations. Already in this first set of activities we can see how sensitive is this matter for the final outcome of the overall political process. Just to focus on one of these elements, the identification and the distribution of the polling stations, we can quickly realise how decisive can be this issue, and how much it can impact on the overall process, included the political outcome. The number of the polling stations -in particular in the urban and crowded areas- their distance, in case of rural areas, from the villages is a clue element having a direct effect of the participation rate in the election day, and on the political result. The way how the polling stations are distributed, in particular in these countries where there is a geographical polarisation of the voters, can be an advantage for one of the contesting parties. Making for the voters more difficult in some areas of the country the access to the polling stations, due to the scarcity of sites, or due to their unequal distribution on the ground, could be a quite powerful tool to affect the vote, with an impact on the right to participate, and on the genuineness of the results.

Other good examples of how crucial can be the electoral administration, and how important are the pre-electoral activities, are the voter registration and voter education, the preparation of the voting cards, the registration of political parties and candidates. In particular in these countries where there is not an official census, the voter registration is again a very sensitive moment, and not for the electoral process only, but on the rights of citizenship as well. The dangers inherent in this case are, for instance, massive enrolment of people not entitled to vote. Let imagine, for sake of example, the border areas of some Africa countries, where the familial or ethnic ties do not correspond to the national border: in this case it can be easy, to increase the number of the voters, enrolling persons of

258 Pastor, Robert A. 1999. p. 8.

259 Pastor, Robert A. 1999. p. 8.

the other state and this way to change the political balance of the area, or of the entire country. During the voter registration activities it can be even possible, with the complicity of the local authorities, to register more than once the same persons, which during the election day can vote several times in different polling stations. In addition to these possible flaws, the entire process can be further weakened by logistic issues. Let just think to the effect that a poor road situation can have on the process: the complication to successfully implement the voter registration activities, due to the difficulty to get the most remote areas, and to safely get back the collected data; the hardness to distribute and safely recollect the sensitive electoral material, the high possibility of car accidents during the movement of the same material. Or just think about the complication of properly implement the voter education campaigns, to train the electoral agents, and so on.

Still it is of paramount importance the human capital available for the implementation of the process: well trained and well formed personnel is needed. Unfortunately quite often in recovering countries, or where the basic institutions, such the education, are not well developed, the literacy level can be insufficient and the lack of a sufficient number of skilled persons more severe. The cultural level of electoral agents is crucial both for the understanding of their role in the process, and for the accuracy of all the sensitive operations (counting the ballots, filling properly the tally sheets and all the other forms, good understanding of the voting procedures and their correct implementation) which contribute to make trustworthy the entire election. The same can be said concerning the need of having skilled political parties agents, and skilled national observers. All of them are fundamental elements of a transparent election: manipulation, or perceived manipulation, of the electoral process by anyone of the contesting parties, can be a loss not only for the credibility of the entire electoral process and for its outcomes, but for the wider cultural process of democracy building as well. In any case a good training is inescapable, which requires time and money.

Finally, among the pre-electoral activities, there is the production of rules for the electoral campaign and for the electoral observers, as well as the proper production of the electoral material, of its timely distribution all over the country, its secure storage.

In the post election period, on the other hand, it is important to have a well functioning judicial system: it has to be able to deal with all the electoral disputes, the electoral complaints, and should certify the final count.

In this series of important administrative decisions, one of the most relevant is probably the one concerning the establishment and the composition of the body in charge to manage the overall machinery, namely a national Electoral Commission.²⁶⁰ The main issue, concerning this electoral body,

²⁶⁰ It has been seen the importance of INEC in the case of Guinea in the previous paragraph.

is if has to be composed by non-partisans civil servants; or if it has to be composed by members of the contesting parties. The general trend is toward an independent electoral commission staffed by non partisan civil servants, and there is comparative evidence that this model has to be preferred²⁶¹.

Historical evidence and observation nevertheless strongly confirm that ‘elections run by independent electoral bodies are preferable to those run by executives, and that permanent electoral administrations are more cost effective than temporary ones.’²⁶²

So, a viable democracy depends as well on the construction of a sustainable electoral process and on a working electoral administration. It is not a simple matter of bureaucracy. It is, first of all, a part of a wider activity of institution building, even if it is not matter of primary institutions; but it is as well a part of a cultural political awareness building, as a part of a process which fosters the growth of the new democracies.

5.4.2 The electoral system

Talking about the technical aspects of the elections, a few words have to be spent about the electoral system, because it is one of the most powerful tools which shape the political system. Generally speaking the choice is between the proportional representation, or the first-past-the-post system (in any of its possible declinations). This is a huge question to debate, and here I think it could be enough just to mention a few main elements, which are not even meant to complete the topic.

So, it has to be noticed that, in general, the proportional system is inclined to replicate at the political level, where they are present, ethnic divisions and cleavages. This because the proportionality tends to produce multi-party systems in which all significant segments of the population can be represented²⁶³. It has, then, to be evaluated what kind of democratic result it is aimed at, and what is the overall situation: if the divisions and the cleavages are a source of instability and disruption, it could more productive to adopt a system pushing, since the beginning, rival groups towards the cooperation and accommodation between each other. This could encourage inter groups bargain and political mediation, conducive elements of a more accommodative behaviour. If, instead, the multi ethnicity is a source of richness and there is a habit of sharing power, a proportional system can be suitable in order all the minorities to be duly represented in the parliament.

It has not to be forgotten that many post-conflict countries are often characterised by a highly di-

261 Reilly, Benjamin. 2002. p. 125. We have seen, however, how in the case of Guinea the suggested option has been opposite.

262 See Goodwin-Gill. 2006. p. 77.

263 Reilly, Benjamin. 2002. p. 128.

vided societies. In this kind of environment the political game is often a zero sum game, so that first-past-the-post system, where the winner *takes all* is often identified as one of the reasons of some democratic failures²⁶⁴: this system can easily cause the exclusion of the minorities from the political representation in the Parliament, causing the dominance of one or two main groups over the others. Under such circumstances, the democracy can be seen more as a source of exclusion and discrimination, and a cause of tensions, fights and violence.

The reasons for choosing an electoral system instead of another could be dictated, too, by other kind of considerations. For instance a proportional system could be more fitted for transitional elections in new democracies, because it sets a direct and easy to understand correlation between the votes expressed and the seats assigned in a Parliament. Or because this system is far more simple to manage in post-conflict situations, as it is very clearly expressed by Reilly²⁶⁵:

Indeed, in many postconflict elections, national PR systems are the only feasible way to hold an election quickly, as a uniform national ballot can be used, no electoral districts need be demarcated, and the process of voter registration, vote counting and the calculation of results is consequently simplified.

The aim of these few lines it is not to collect arguments sustaining one particular position; it is, rather, simply to argue how, for the choice of the electoral system, it could be wise to use the same cautions used for timing. This implies that the electoral system cannot be obtusely engineered on the paper without taking in consideration local political, cultural, social, and historical elements. It is not matter of a top down imposition of a standard uniform system all over the world, because in a political process, like the elections are, not even what it could seem a purely technical problem, is completely free of consequences on the political results. The risk it is always to betray the core of the right to participate and of the democracy.

5.4.3 Political parties

An electoral process whatsoever cannot be thought about without the political parties, whose role in it is far from being negligible. They can be a useful tool providing some kind of connection between the politics and the society for a number of reasons. First of all they collect the political demands, and the political needs of the society and translate it in political programs and political actions. In this way they populate the market of the political offer and provide citizens with the possibility of choice. In addition to this, they are the main vehicle for recruiting politicians, for training them, and

264 Reilly, Benjamin. 2002. p. 133.

265 Reilly, Benjamin. 2002. p. 130.

for providing, then, formed people for government tasks. They finally can exert, when playing the opposition role, the task of monitoring, criticise the governmental activities, and making accountable the government itself²⁶⁶. It is possible to have political parties without democracy, but it is almost impossible to have democracy without political parties.

In the developed democracies usually there is a couple of main parties which can regularly expect to alternate in the management of the power. But the picture in the newest democracies can be different: we just mentioned a few lines ago, how the post conflict countries can be characterised by divided societies where the political game is a zero sum one. In these cases the political parties can have a quite different role highlighting the social divisions and the cleavages, and insisting on the fight instead of trying the political composition. In such divided societies they can be the expression of familial clans or ethnic homogeneous groups; or, still worse, in particular where no previous democratic institutions were pre-existing, they could be the same fighting armed factions with a little political disguise. Cases like the last ones are not infrequent: former Yugoslavia in the 1990s, Burundi 1993, Bosnia 1996²⁶⁷.

In a zero-sum political environment, where the winning party takes all the available places, and possibly the economic resources of the entire country, to be the losing party means a concrete risk of being wiped out from the political landscape forever. Under such circumstances a democratic election can lose, for the involved political parties, its main role to determine the will of the people, to become a simple matter of individual survival. In this way holding the elections, which already *per se* is very sensitive and potentially destabilising, increases the likelihood of conflict onset in post-conflict settings and can become a source of unpredictable and frightening results²⁶⁸. *Ceteris paribus*, post conflict elections are more politically destabilizing when held in new democracies²⁶⁹. We can even assume, using the words of Flores and Nooruddin, that election losers may easily revert to armed force to change elections' results²⁷⁰. This, due to the fact that in most post-conflict countries the societies are deeply divided, and quite often what should be democratic elections tend to reproduce the same pattern of fighting factions which originated the instability. Thus, one of the easiest way to campaign in such environment is to appeal exactly to the same kind of divisions which the electoral and participatory process is trying to bypass, and to transform from struggle into political debate. In these kind of situations there is the real risks that the political parties undermine, instead of nurturing, the democracy building process, and the electoral process in particular. There-

266 IDEA http://www.idea.int/parties/international_assistance/parties_necessary.cfm last browsed on February 8th 2015.

267 Reilly, Benjamin. 2002. p. 133.

268 Simon Hug. 2011. p.4.

269 Flores, Thomas and Nooruddin, Irfan. 2012.

270 Flores, Thomas and Nooruddin, Irfan. 2012. p.561.

fore if a sustainable democracy has to be built, in such post crisis situations it is necessary a political and cultural effort to create broad-based, multi-ethnic and cross-regional parties. In this way the parties, created on completely new basis, can not only accomplish their institutional functions, but they can also provide significant contributions to create new political belonging, to help the reconstruction of the institutions of a country, and of a more functional democracy. These new political parties can aggregate in a different manner the political demands and preferences, they can shape new political alternatives and, shortly, they can reshape the entire political landscape.

It is important that such new political parties have a broad consensus, and that they are built on political programs, instead of being personalised and sectarian: sectarianism would simply re-create the fragmented situation which participation, inclusiveness, democracy try to bypass. Thus setting particular *rules of game* to encourage mixed parties, and even some external and non intrusive intervention, can stimulate the launch of a new political and participatory landscape. And if this stemming of parties needs to have a bottom up approach, it is of crucial importance as well an institutional approach, internationally sustained. Therefore, beyond the broader question if proportional or first-past-the-post system has to be preferred, institutional engineering has to focus on electoral systems which through its technicalities can encourage this trend. What is important, however, is an uninterrupted attention to the local peculiarities, because even an abstract and reasonable instrument needs to be instantiated in a particular way, following the unique situation of each country.

So, from this perspective the better guarantee of having a working democratic regime or a smooth electoral process, is a high level of democratisation and strong democratic institutions pre-existing to the crisis. Even in case of a negative democratic experience, the mere fact of having experienced a democratic regime means that democratic institutions have to be reformed, but not rebuilt from the scratch. The stronger the democratic institutions were, the easier and the smoother the electoral process can be²⁷¹, and even more beneficial the elections can be for the restoration of the democracy. Lacking this pre-requirement an extended period of institution building before the elections is required to make the outcome of the democratisation more stable.

These considerations about the political parties offer, moreover, a new and additional perspective to the timing issues exposed in a previous paragraph. And this perspective, as well, points toward the direction of not to rush to the polls. Time is required to build an institutional frame, in this case concerning the political parties, which can guarantee a long term perspective for the democratic regime emerging from the elections. This time is not easily predictable, and it obviously strictly related to the starting democratic level. The organisation of the elections, with all the implications it has, is

271 Flores, Thomas and Nooruddin, Irfan. 2012.

then a single side of the more complex process of institution building. As it happens with the human rights, which are interconnected, the same happens with the democracy building activities which are strictly interrelated each other. They can be conceptually distinguished, but they are a single corpus where every single piece requires all the others to be fully effective.

It is worthwhile to mention, however, that this idea conceals some problems. Institution building can easily be a time consuming process requiring not only institutional engineering capabilities, but economic resources, economic development, cultural changes, local political will too. It is clear that all these conditions ask for a strong international support, but this support has to be careful and respectful of the domestic situation and necessities. Respectful means not only that the process cannot be externally imposed, but that the support from the international community has to come as a sustain to a process which needs deep domestic roots, the ownership by the country targeted, and, finally, a development path tailored on the specific needs, and on the peculiar environment where it has to be effective.

All this situation raises a couple questions not easy to be answered, namely if the international community is always available to take care of the economic and political costs such enterprise requires; and if the same international community is ready not to make geopolitical preferences among countries, but to engage itself in the same way in all the circumstances. The sense of the reality would suggest that this is not always possible. As we have already seen, for instance, the effort made for Kosovo, simply due to the geographical dimensions, cannot be replicated in the same scale for countries like DRC. This does not mean, of course, that for some egalitarian idea in Kosovo the intervention should have been downscaled. But this example, indeed, can help to focus how the endogenous elements (such as geographic extension, geographic location, cultural aspects and so on) can heavily affect the possible strategies, the realistic expectations, and the optimal timing not only to hold the elections, but to trigger a sustainable democratic process. It is common sense to argue that in such situations it cannot be viable a standard approach to the democratisation processes and to the elections.

5.5 Free and fair elections is still enough?

5.5.1 Free and fair

Free and fair has been for a long while a catchphrase representing the expectations about the electoral processes of both the international community, and the local stakeholders: only free and fair

elections were supposed to truly express the will of the people. This phrase made, supposedly, its first appearance in a report of Togoland's 1956 independence referendum²⁷². Since, it has been used by the electoral observers, the international ones in particular, to measure the quality of the electoral process, and the accomplishment of one of the preconditions for a fully fledged democracy; but by journalists and politicians as well, as an indicator of a successful election.

Of course, it is difficult to define what there is behind this watchword, which is more evocative than descriptive. Amongst others, *free* is about participation and choice, and contrasts with *coercion*. *Fair* is about equality of participation and vote, and about impartiality and non-discrimination; its opposite is *unequal treatment of equals*. Together, they imply respect for human rights at large, and the absence of coercion. In the practice it could often be difficult to distinguish between freedom and fairness.

However, the increasing demand for standardised criteria of assessment of the elections, made evident the necessity to identify more specific criteria in which the generic concepts of *freedom* and *fairness* could be translated. This would require that the electoral process is broken in all its components -e.g., the electoral system, the voter-registration system, media access, campaign rules, ballot counting- each of one with a certain set of evaluation criteria; and after that try to assess whether conditions within each area comply to the idea of freedom and fairness. But even this way, the problem is far from being solved, because even under the best conditions it is neither thinkable, nor methodologically feasible, to insist on the full achievement of all the criteria before declaring an election *free and fair*.

There are, of course, cases where the whole electoral process cannot be declared *free and fair* because the frauds, or the violation of a large number of key criteria, are so patent that no doubt can remain. And there are many cases, as well, in particular in the mature democracies, where the electoral machinery is so established that, even if not perfect, however the elections can safely be defined *free and fair*. In none of these cases there is a real interest to define what *free and fair* is. But between these extremes, there is a grey zone, and this is where it is very likely that the international community is called to deploy missions of electoral observation. In this grey zone it is very difficult, if not impossible, to draw a clear cut line which unambiguously can distinguish a process evaluable as democratic from a non-democratic one. Maybe, in some cases, the election have been politically free, i.e. with no coercion or threatens; but not fair, because of technical shortcomings which could be due to particular conditions of the country, as we have extensively seen. Or, perhaps, they are free in a formal sense, but fairness is limited in practice; or perhaps they are free only

272 Elklit, Jorgen and Svensson, Palle. 1997. p. 33.

to some extent, but rather fairly conducted within those particular limits.

This difficulty to define *free* and *fair* makes difficult to properly or unambiguously apply them, and however they are still used, in particular when addressing to the public opinion, and as a kind of mantra for possible judgements of electoral processes. Still in February the 7th 2015 in a declaration concerning the elections in Nigeria, the chairman of the Nigerian INEC was affirming that: “Our level of preparedness, despite a few challenges, is sufficient to conduct free, fair and credible elections as scheduled on February 14 and February 28”.²⁷³

It seems that there is no a coherent way to use them, and that it is more a question of judgement of every single observer. On the other hand, Goodwin-Gill sustains that the conception of a free and fair election derives from established legal rules and principles²⁷⁴. He, then, seems to think that it is possible, anyway, to get the origins of freedom and fairness, so that although fuzzy *free and fair* could be, is there a clue which can unambiguously define them, and through it judge an electoral process. He is sustaining a vision of the electoral process as an event which has to be assessed and judged using a set of rules which have to be complied. No space seems to remain for understanding and interpreting the event.

What we are here sustaining is, instead, that given the multiple variables which result, for example, from history and culture, or from choices about systems and implementation, the *free* and *fair* cannot be in any way the determinant of an outcome in every case.

An alternative way, in the last few years, to evaluate the elections has been to define them compliant (or not) to the *international standards*. But this new catchword, as well, is misleading. It refers more explicitly to norms and rules without, however, making too clear what these rules are; and it suggest that besides the norms there are some additional elements, common sense principles (like transparency or genuineness) or good practice examples, which create this widely (better: universally) accepted model for conducting the elections.

In this way the idea that there are binding commitments and obligations -with a political content and a political meaning- which the States have freely accepted and signed (such as the ICCPR) is hinted at, and it is put in first row a purely technical idea of elections. The political aspects tend to fade, and participation becomes no more a part of the human right system; no more a founding moment of the democratic power, but just a technical matter, a standard, exactly likewise the size of a A4 paper sheet has the exactly same measure all over the world. On the contrary it is important, that in the common perception is not forgotten the political evolution which brought the States to sign the hu-

273 ICG blog <http://blog.crisisgroup.org/africa/2015/02/12/nigerias-elections-a-perilous-postponement/> last browsed on March 2nd 2015.

274 See Goodwin-Gill. 2006. p. 74.

man rights tools. And it is important to bear in mind and that the elections are not a bureaucratic accomplishment, but the instantiation of a right to choose, to participate, and to determine the political destiny of a political community. And, finally, that the elections are a human right. Moreover *standards* disguises the political commitments too, which are a relevant part of the political engagement for the promotion of participation, and of all the human rights. Finally these standards, in their reality, are not universal neither binding, and risk to appear only as the Western face imposing Western standards over situation which are not easily understandable without Western categories. Better said, there is the risk that local populations, or part of them, could perceive these standards as a form of political colonialism; and that an approach just based on the idea of measuring a performance could be just a way to put political pressure on the local players.

So, after this analysis, I would rather agree, in this case, with the perspective of Elklit and Svensson, when they write that:

the phrase "free and fair" cannot denote compliance with a fixed, universal standard of electoral competition: no such standard exists, and the complexity of the electoral process makes the notion of any simple formula unrealistic. Election observation requires the simultaneous use of multiple scales to achieve valid and reliable measurements of complex phenomena. These problems especially affect the large segment of elections that are neither clearly free and fair nor clearly *not* free and fair.²⁷⁵

We can read in these lines a more structured idea of elections, which is not simply based on an idea of compliance to rules, but which takes in account the number of grey zones the political reality creates, and the variety of different elements the elections are made of. Each one of them needs a peculiar measurement, and it is possible that a same element could be in need of a different measure in a different political and cultural environment.

The situation seems to be, thus, inescapable. Two different ideas of *free* and *fair* are struggling, but both of them seem to be based on the idea that the electoral process has to be judged or measured. Maybe the moment has come to ask the questions not if *free* and *fair* are useful tools for evaluating the elections, but if the evaluation of the election in itself is still an exercise to be done, or if, following the few evidences we tried to collect, new tools have to be exploited to understand the process. In other way, given that the elections are a political and a technical process at the same time, the question is if it is possible to use a single approach covering both the aspects, or rather if it could be better to suggest an approach which privileges one side on another, the political side rather than the technical one. If we need to put a stamp on the elections, and this way decide to act as a kind of tribunal to declare the fairness of a process on merely technical basis, or if we are far more interested in sustaining a democratisation process which is endogenous and sustainable, not perfect

275 Elklit, Jorgen and Svensson, Palle. 1997. p. 42.

but perfectible, with the political, and not the bureaucratic, aim to sustain a process of democratic growth.

The same European Union in a communication of the Commission on EU election assistance and observation notices that

the assessment of an election as “free and transparent” has sometimes proved inadequate where an election is taking place in an unstable environment and in a period of political transition (e.g. Nigeria 1999 and Cambodia 1998). The assessment of elections must do justice to the fact that they are part of a slow and gradual development towards democracy.²⁷⁶

5.5.2 What, then?

The innovative vision of the EU on this issue of *free and fair* is further confirmed and expanded in a Briefing Paper of June 2008. In this paper a completely different vision is offered, based on the suggestion we already found in Elklit and Svensson about a *grey zone*:

After 15 years of international election observation, with increased awareness of election standards and observation methodology, subjective and simplistic ‘free-and-fair’ statements have lost credibility. The particular problem with the ‘free and fair’ formula is that it only allows a black/white evaluation, while the quality of an election is mostly in a grey zone between fully in line with international standards and fundamentally flawed. Describing the ‘position’ of an election in the grey zone accurately is the challenge of election observers.²⁷⁷

So, in spite of the fact that media, large part of the international public opinion, and very often the involved populations as well, are still attracted by such kind of narrative, something new is necessary. And it is not only matter of having better tools for evaluating the process of democracy building, but it is, as well, matter of giving the involved citizens and voters a new perspective about the way the international community can sustain a country in this process.

Let say something about this last point. We have seen how the idea of *free and fair* implies a judgement or a measurement using established legal rules and principles. This lead to think that in all the cases a final evaluation can be done, and that the result can be, simply, a kind or yes/no based on a binding check list. This is the kind of narrative, simple and clear, which the media in particular, but a kind demagogic and simplistic narrative as well, like to spread. They like it because of its simplicity allowing a communication easy to convey, simple to understand, non problematic, and functional to easy-to-spread political messages. On the side of the public opinion, the mechanism of the comprehension works in the same way: when a simple answer is offered, regardless of the complex-

²⁷⁶ Com 2000/191, p. 7.

²⁷⁷ EU Election Observation: Achievements, Challenges. Briefing Paper. Available at http://democracy-reporting.org/files/european_parliament_-_study_on_eu_election_observation.pdf p. 13.

ity of a situation it concerns, it is accepted much quicker, and spread even faster. This situation encourages, too, media and politicians to make judgements often based on a partial knowledge, sometimes with the aim of manipulate, for political reasons, the public opinion. In cases like these, what makes the situation a little worst, is that this conveyed idea of judgement carries with it the idea of some kind of *retribution* when something goes wrong. So the government, or the electoral bodies, should be sanctioned if the process does not fully comply the minimal standard, based on local perceptions, and regardless if this non compliance is a part of a wider attempt to rig the process, or the necessary outcome of some kind of logistical, economic, or political difficulties. And it is expected that the international community can take initiatives in that direction. So expectations are created toward the observers and the international community, in order to act some kind of political or military intervention to re-establish the fairness of the process.

The negative fall back is that when the international community is perceived as not complying to these expectations, disappointment and mistrust generate among the citizens; and this has an impact on the credibility of international institutions, and on the idea of democracy and human rights in itself. In short, not only the concept of *free and fair* is weak and easy to manipulate as a tool for evaluating the elections; but the implications it has, can have deep effects on the idea of democracy. It is, then, matter to create a new narrative concerning both the elections and the role of the observers.

Considering what has been said so far, it is interesting to notice how the quoted document of the EU makes an intriguing terminological change: in the text there are not any more word like *judge*, *evaluate* and so on, but the task of the observer is to *describe the position* in a grey zone. So *free and fair* become suddenly an obsolete way to look at a process which has not to be evaluated, but described. What the purpose of this description is, we will see more in detail in the following paragraphs. Roughly said now, the description can be seen as a picture of the process to be analysed by the involved country to pick imperfections and shortcomings of the process, and to have a roadmap to follow on the way of the improvement of the democratisation processes.

In this perspective the invitation the states make for international electoral observation missions has not to be understood as a request for someone to assess the electoral process and to put a stamp on a certificate of democracy. It should, instead, be seen as the will to be sustained and advised on the way to build a long term democracy, and an institutional system compliant, as much as possible, with the human rights corpus.

5.6 Electoral observation

If the post-Cold War era has witnessed a dramatic reduction of the inter-state conflicts, it has although recorded, in spite of predictions concerning the end of the history, the rise of the intrastate conflicts. This trend has, unfortunately, kept its pace, and nowadays there is a seemingly increasing number of areas of the world with ongoing conflicts or low intensity wars. Roughly speaking it can be said that we are facing a profound crisis of the idea of national state we knew so far. Many, and very complicate, are the causes which could explain this situation, but a few elements can be indicated at the core of this crisis: the economic globalisation, but also the growth of ethnic nationalism, the rising of religious extremism, and the worsening economic conditions in many regions of the world. The destabilising effects of these phenomena have been particularly harsh in these countries already weakened by the conflicts. The unstable and volatile situation which affected populations on a large scale, generated massive migrations and widespread suffering on civilian population. Ethnic and religious minorities, tribal groups, ambitious warlord, and marginalised and discriminated-against populaces have all raised the banner of revolt as they seek to redress grievances²⁷⁸. And while it is difficult to see a design of a new international order able to manage this situation, many recent events triggered a debate regarding forcible international intervention at least in such cases where gross human rights violations took place, and expanded the notion of peace keeping intervention.

Given that a viable strategy is not just to cope with the crisis, but to create the conditions for a durable peace situation, most of the programs to help the countries affected by the crisis focused on the necessity to restore a working and legitimised government. So, as we have seen, a democracy-building program were implemented in many countries with the external support of the international community, and the elections one of the most visible events of the successfulness of the strategy.

Seen from the point of view of the international support, the electoral observation missions can be defined as a political complement of the electoral assistance²⁷⁹. However, this kind of activity has to be completely independent and autonomous even from the institutions funding and promoting it, in order to guarantee the full impartiality of the results and independence of judgement.

5.6.1 International observation

For a variety of reasons the election observation is a rather attractive strategy for many international actors. One reason is that this activity is widely visible due to the echo and the media coverage the

278 Garber, Larry and Kumar, Krishna. 1998. p. 36.

279 See EU Com. 2000/191.

polling days usually have. Another reason can be the fact that the level of infrastructure that the electoral observation requires is far lower in comparison to other possible tools of democracy promotion, which are costly and need a commitment over years. Finally, because once that a tool box and a methodology for election observation has been developed, it can easily and without too huge expenses be replicated in many countries.

It is not, then, strange, if in this wide framework came to the light a sort of market for election observation, which in many cases has been perceived as a sort of external agency for an international validation of an electoral process. And, in its last resort, as the international stamp for all kind of governments, included some not exactly democratic, for being legitimised in front of the international community²⁸⁰.

But, as we tried to sustain in the last paragraphs, this is a common and oversimplified perception which risks to provide a dangerous idea of what a human right is, and a long term non sustainable perception of the democracy. We would like, rather, to suggest that the electoral observation should not be seen as an election validation system, but that it has, instead to be considered as one of the most visible strategies for promoting democracy. And that this can happen in a number of different ways considering both the international and the domestic activity of observation.

A classical definition of what the electoral observation is, is the one proposed by Bjornlund:

Election observation can be understood as the “purposeful gathering of information about an electoral process and public assessment of that process against universal standards for democratic elections by responsible foreign or international organizations committed to neutrality and to the democratic process”, aiming at “building an international confidence about the election’s integrity or documenting and exposing the ways in which the process falls short”.²⁸¹

Although interesting and complete, this description of the observation activity is not fully satisfying. Before stressing the elements which we already noticed as critical, just a few words on the definition.

Observation is, then, a gathering of information on the electoral process. So, this means that it is not only matter of observing some polling stations during the polling day, but that the activity stretches over a far longer period. In order to gather the information, all the relevant aspects of the process itself have to be observed. It means, first of all, that the observation, for instance, has to follow the entire electoral campaign, has to be in touch with all the political parties, and collect informations in a completely impartial way. The collection of informations has to be done, as well, interviewing opinion leaders, women, representatives of minorities, local tradition authorities (if any), civil soci-

280 See Hide, Susan. 2011.

281 Bjornlund, Eric. 2004. p. 40.

ety, journalists and media workers, members of the judicial system, voters. In this phase, in particular dealing with the political parties, there is a high risk of manipulation: the parties involved in the process could try to *sell* their own political vision to the observers. The international observers cannot be perfectly aware of the local situation, so that a great attention has to be paid to have a critical habit toward the informations gathered. All the informations collected have to be carefully balanced and verified before they become part of a report.

The international observers are committed to a strict neutrality and impartiality. This is a particularly sensitive point: the impartiality has not be not only *real* but *perceived*, as well. What I mean is that it could not be enough to act faultlessly, but it is very important, in particular at the domestic level, that the population is not victim of manipulations and attempts to discredit the mission. There could be many political reasons pushing one of the contesting parties to reject the observers which are denouncing frauds committed this very party; or to declare an allegedly endorsement of the observers for their own candidates. In cases like these the entire mission is jeopardised, and the credibility of the international institutions, and of the democracy-building activities too.

This is particularly dangerous considering that the aim of the observation is to build an international confidence about the integrity of the process, which cannot be done if there is a suspicion that the observers are not strictly impartial.

Some elements of the Bjornlund's definition deserve, however, to be critically analysed. One first point concerns the lack of any reference to domestic observation. The first thing to notice is that this definition seems to concern only international observers. The people gathering information are only *responsible foreign or international organizations* as if the domestic observers had no role in the electoral process. This seems to be a little inconsistent with the idea of election observation as an activity of democracy promotion. The role of the domestic observer, instead, is crucial for creating a democratic cultural and political background. But we will detail this role in a next paragraph.

On this same line of thinking, it has to be noticed that in the aim of the observation is to build an *international confidence about the election's integrity*. Again, this reference to only the international confidence is misleading and misses, in my opinion, a crucial element of the electoral observation, which is the domestic building of democratic culture. So it is, of course, important for the international community to know if the electoral process has been trustworthy and if, therefore, the political government is legitimised. But there is, even before the international need, a domestic necessity to trust in the process, because it brings more easily to the acceptance of the results, whatever they are. The two kind of perspectives are not mutually excluding, but they are, rather, complementary.

On the international side it is important, because information about the conduct of the electoral pro-

cess can offer a number of relevant evidences about the political capability of a given country to manage in a clear and transparent manner their own internal processes of political turnover; or the transition from a conflict phase to a post conflict and democratic period. Moreover, it provides crucial elements concerning the logistic capacity of the same country to properly manage a complex process, and full of practical implications, as the elections are. Finally it provides information about the society, its capability to understand and manage the process, its capability to participate to it, and to use it as the right tool for carry out, in a peaceful way, political and social changes.

But the confidence has to be created in particular in the involved country and so, as we already stressed, the effective and perceived neutrality and impartiality of the observers has to be made clear to the voters first of all, because thanks to the work of the observer it is the entire process which becomes reliable. So, the most important element is that a domestic democracy is established and made viable, and on this result can be built the external democratic accountability in the international community.

It is, finally, to be noticed, how the proposed definition does not use *free and fair* to define a satisfactory electoral process whose results can be considered trustworthy by the voters and acceptable by the international community. It, rather, uses *international standards* which is not, how we have just seen, an optimal choice, and can be debatable like the other catchphrase which is meant to replace.

We can try, then, to analyse another definition which possibly can better fit to the role of electoral observation as a democracy promotion activity, and not as a mere evaluation and judgement of a process. Following this other definition, electoral observation is

the purposeful “gathering of information regarding an electoral process, and the making of informed judgements on the conduct of such a process on the basis of the information collected, by persons who are not inherently authorised to intervene in the process”²⁸².

This definition results shorter than the first one, maybe more generic, but it offers an interesting overview on the possible role of the observers. It has to be noticed that no reference is made here to the confidence of the international community to be build. The only purpose of this activity is to make *informed judgements* on the process. The role of the observer it is defined through a kind of negative definition. The observer is the one who is not authorised to intervene in the process. She or he is a sort of anthropologist which collects information and registers events, without any kind of interference, even in the cases of the most blatant violations of any electoral related procedure or law. What the informed judgements of the observation aim at is not expressed in the definition. We

282 International IDEA: Code of conduct for the ethical and professional observation of elections. Stockholm 1997 p. 10.

can, however, suggest that it could be matter of preparing documents containing suggestions and proposals for the improvement of the electoral process, which would help the country to understand strengths and weaknesses of its activity.

It is here outlined, for the electoral observation activity, a sketch of a possible different role at the crossroad between the implementation of the right of participation and the democracy promotion activities. The electoral activity can be considered as one of the aspects of the realisation of the right to participate. It has to respect all the international obligations and commitments the country is bound to, and the domestic peculiarities which characterise the country.

The observation activity should be, then, less and less a supervising exercise stressing with a red pencil the flaws of an electoral process and sentencing, at the end of it, if it has been correct or not; or if it has to be accepted or not by the international community. The prevention of frauds, due to the deterring presence on the field of the international observers, and the simple production of evaluation documents cannot be the focus of the observation activities. It would be a too narrow minded task, defined not by a positive approach to the process as democracy building initiative; but in a negative way as an identification of the weaknesses.

This is not a good description of what democracy building should be, and of what, in the framework of the democracy building initiatives, it should be the role of electoral observation. This looks more like a mere technical evaluation which can hardly help a country which is constructing its path to democracy, to find its way. The risk is that this activity is transformed in a simple production of check lists where the aspects of the process falling short from the international rules are pinpointed, and handed over to international bodies for their judgements, and their possible political initiatives or sanctions.

A still more recent definition of the electoral observation activity sheds, finally, a better light on what electoral observation should be in the new vision of stressing its role in democratic promotion:

International election observation is: the systematic, comprehensive and accurate gathering of information concerning the laws, processes and institutions related to the conduct of elections and other factors concerning the overall electoral environment; the impartial and professional analysis of such information; and the drawing of conclusions about the character of electoral processes based on the highest standards for accuracy of information and impartiality of analysis. International election observation should, when possible, offer recommendations for improving the integrity and effectiveness of electoral and related processes, while not interfering in and thus hindering such processes.²⁸³

First of all, compared to the previous definitions it is now completely missing any reference to

283 Principle 4 of the Declaration of Principles on International Election Observation https://www.ndi.org/files/1923_declaration_102705_0.pdf

judgements. The collection of information is meant to gather elements which have to be professionally analysed, which means not simply checked against the international binding laws, or the international standards. They are, rather, object of a study which should produce conclusions (not judgements) on the overall electoral process. This is not a simple scholar exercise of critical analysis; it is a task which, finally, should offer recommendations *for improving the integrity and effectiveness of electoral and related processes*. This should be, then, a kind of support to the local governments and to the stakeholders of the electoral processes to help them to critically reflect on the process they implemented. Reflection on the process, analysis of its strengths and weaknesses, is a way to trigger a critical debate about the democracy, the democratisation processes, the right of participation and the human rights. It is, in other words, an opportunity to create and spread a domestic reflection on human rights and democracy, which can greatly contribute to that very process of creating and fostering a domestic culture of the democracy. And it is a way to promote, through this reflection, the ownership of a democratisation process, which is the base for a sustainable democracy.

The core of the electoral observation becomes, then, the production of recommendations. The UN system has already understood this key point, and it started paying increasing attention to the reports of the electoral observation missions²⁸⁴. This new approach to election observation is being embraced, as well, by a growing number of organizations, and has become the basis for designing new types of observation techniques, which seek to analyse the gap between host country national legislation, its implementation on the ground, and the overarching international obligations subscribed to by the host country. The European Union too has already implemented this strategy: the final reports of its Electoral Observation Mission (EOM) became the core of the EU strategy, and it is thought and designed to be like a kind of assessment concerning the state of the democracy in the countries inviting the missions.

So, the role of the observers is to collect, analyse, and deliver relevant informations about the electoral component of the overall situation in the wake of the broader activities of democracy support and institution building the international community organises to go along with the government in their way to the democracy. The question if an electoral process has to be deemed acceptable or not, has moved, then, in the background. Unless there are gross violations of the basic rules of the international electoral instruments, which question the effective capacity of the electoral process to express the will of the people, the electoral observers should not be supposed to express verdicts. It has rather to offer hints, suggestions and reflections about how to possibly improve the process and

284 See, for instance, General Assembly Resolution 62/150 paragraph 7: “encourages those organizations [international, governmental and non-governmental organizations] to share knowledge and experience in order to promote best practices in the assistance they provide and in their reporting on electoral processes ...”.

promote long-term sustainability after an election. In this framework, where appropriate, a technical assistance mission could continue to assist the government to remedy any weakness in the electoral administration and the rule of law, as it should be now the policy of the the European Union, for instance²⁸⁵.

The final reports of the missions can, this way, serve as a basis for negotiating with the interested countries the kind of democracy support interventions better fitting to the contingent situation, and to better plan them. Therefore no standard interventions, but interventions tailored to respond to specific needs and requests. The final reports are not any more the bureaucratic report with lists of weaknesses, but a powerful tool able to trigger a political debate, and a concrete set of actions aimed to a general improvement of the democratic life. They represent, in this perspective,

a snapshot of the state of democracy in the host country, and documentation of the gaps that exist between international obligations and the domestic legal framework, and between the domestic legal framework and implementation practice observed on the ground.²⁸⁶

In this renewed vision it is still important to discern the way the rules and the principles are applied, and to determine whether individuals and groups have ideal opportunities, but not any more with the idea to *use the elections as a yardstick for measuring democratization*²⁸⁷. The international observation is, rather, one of the tools through which the international community manifests its long term efforts to consolidate democracy.

Of course all these goals have to be pursued carefully implementing the EOMs. This means, for instance, to select and send skilled and professional observers, and to implement a political governance which does not take in account any kind of hidden agenda or contingent political targets. The content of the final reports of the EOMs has to be not only carefully verified and sustained by irrefutable evidences, but it has to be accountable and believable for both the international community and the local population. This is far from meaning that it has to reflect the expectations of the local and international public opinion, which can be manipulated or ideologically oriented. On the contrary, the credibility has to be gained on the field and the international mission has to build confidence among the population acting in an impartial and professional way. It will be the entire international community to gain credibility as an impartial guarantor not only of a single right, but of a whole system of rights, of a democratic system, based on the human rights in an environment where the activity of institution building has to be paired with a fundamental element of confidence

285 See European Commission, Commission Communication 191/2000 paragraph 4.4. p.16.

286 See Balme, Tuccinardi and McCormack in: International Institute for Democracy and Electoral Assistance and Inter-Regional Dialogue on Democracy (Organization), *The Integrity of Elections*. 2012 p. 65.

287 See Goodwin-Gill. 2006. p. 22.

building.

5.6.2 Importance of the domestic observers

As it has been emphasised several times, a more meaningful role for the electoral observation cannot stop to the mere assessment of the electoral process, and to check its consistency with the international obligations, proposing improvements in order it to better fit with them. The observation has to be meant, too, as a way to spread the culture of the democracy, to improve it and to make it stronger in particular in those regions of new democracy or of unstable ones. So, if so far it has been mainly matter of international electoral observation, it is now the case to spend a few words concerning the domestic electoral observation whose role can be of paramount importance.

The importance of the domestic electoral observation is difficult to underestimate. In comparison to the international EOMs the domestic observers have a long list of advantages: they know very well the political context, they have a clear perception of the challenges of the process, and they can figure out quite easily the possible weaknesses of the process. Moreover, if the international missions can only deploy on the field a necessarily limited number of observers, the amount of domestic observers is far higher. They can, therefore, work on a much higher quantity of data and information, and they can get really impressive results: not only they can potentially cover the whole of national extension and the totality of the polling stations, but they also can cover in deep all the events election-related, they can, for instance, implement parallel vote tabulation, as well as audits concerning the electoral registration or the way the political parties get their funds. Albeit they are very often overshadowed by the international missions, however their role is getting more and more crucial with the ongoing broadening of the activities to be observed for a complete vision of the process. So, the registration of the voters, delimitation of the constituencies, complaints, political campaign, monitoring of the local media, bribes: all of them are activities which can be best covered by the domestic observers, the only ones to be really able to manage a *long term* observation, which does not not leave the country after the elections.

From another hand the domestic observers can, however, experience difficulties for a variety of reasons. The most obvious stem from a persistent scarcity of financial resources. In particular in post conflict countries, but generally speaking in low income countries, it can be quite difficult to find a structure having the economic capacity to organize an extensive observation all over the country; or even small or medium size organisations implementing it on a local scale. In this last case a strong coordination between all the organisations would be necessary but, besides the eco-

nomic difficulties, it is always quite arduous to implement because of possible internal disagreement about leadership or visibility. Moreover, in many situations, in spite of the potentially high number of observers, there is an actual scarcity of them due to the poor quality of the cultural level and of the fair level of literacy rate. So, it can happen to have many observers not fully trained to understand not only the process they are supposed to observe, but not even the precise role the observers have. Finally, due to the mentioned weaknesses, the observers could be more exposed to local pressures, or to political influences, or to manipulation. They can be biased, their reports not always are accurate due to a lack of funding and of training, their behaviour not always the best one (but this could be the case for international observers too). So, the results they can reach vary from a country to another, and their role has often been discussed due to a general mistrust of them.

Over the last few years the methodology for domestic observers has changed, and it become more and more different from the international observation. So there has recently been issued a document under the auspices of NDI, the Declaration of Global Principles for Non-partisan Election Observation and Monitoring by Citizen Organizations²⁸⁸. This Declaration contains a rationale for citizens and civil society to monitor and promote the integrity of the electoral process. It

defines the activities and delineates ethical obligations concerning impartiality, independence, accuracy, transparency, non-discrimination, respect for the rule of law and cooperation with other electoral stakeholders and international election observers.²⁸⁹

The Declaration is accompanied by a code of conduct helping to make more operative the whole of the document.

The local observers can play a key role in the development of democratic institutions. Their commitment is important not only for the elections and the implementation of the participation rights, but it can clearly have a very positive effects of the whole of the human rights system. As it is stresses in the EU Communication 191/2000,²⁹⁰ once democratic institutions are established and functioning well, foreign observers should no longer be needed. The domestic observer, instead, will remain in the country and deserve, in many cases, an ongoing support in term of financial resources, training, political support. They deserve to be sustained with dedicated programs and activities in order to help the culture of the democracy and of the participation to settle and to grow. As a part of the civil society they have to be supported and encouraged, and helped to expand, but to be, at the same time, well-balanced and neutral in their activities.

288 <http://www.gndem.org/declaration-of-global-principles>

289 <http://www.gndem.org/declaration-of-global-principles>

290 European Commission, Commission Communication 191/2000 paragraph 4.4. p.15.

5.7 The case of elections in Mali 2013.

The idea of this final section is to have a closer look to the final reports of a couple of Electoral Observation Mission (EOM), EU in this case, to check and see how what we described so far is put in practice by field missions. In particular we aim to show how the old idea of *free and fair* elections is not used any more; how the structure itself of the final report is conflicting with this idea; how a modern approach to the electoral observations is structured to assess the process from a much wider perspective. We will see how the assessment encompasses a wide number of issues, which means that the whole of the electoral process is broken into its elemental components, none of which can be settled with a simple judgement, or with glasses like the *free and fair* judgement, or like the *international standards* compliance. So, after analysing and describing these single elements, the pieces are put together, the whole picture is recomposed and the complexity of the process fully reveals. At this point it becomes “only” matter of how the pieces fit between each other, and how the overall picture remains consistent with the engagements the country signed at the international level.

This is why before implementing a EOM some pre-requisites are necessary, and first of all it has to be ensured the real willingness of the government to organise a truthful election. In other words, the *freedom and fairness* of an election is matter of political assessment of the preliminary mission, whose aim should be to verify if in a given country there are the minimal political conditions for the elections to be held, and to sign a Memorandum of Understanding allowing, among other, the observers to freely access all the offices and all informations relevant for the elections. Only when these conditions are met an EOM can be planned and deployed.

After that, only in case of gross and massive violations, or voluntary governmental rigging, the EOM can express possible negative technical and political evaluations. In all the other cases it should be only matter to verify how the local environment is implementing the international tools which concern the participation rights. So the EOM is not about regularity of a process, but about the way the internal tools regulating the participation are planned, designed, and implemented from the technical point of view. The simple presence of the mission is *per se* a signal of a situation already in its way to the democracy, and which only deserves to be sustained and encouraged in this path.

This is the narrative which should be promoted domestically and internationally. The local stakeholders, the political parties, the civil society, the electoral administration should perceive the observers not like a kind of referee, but as external actors whose aim is just to work with them to develop the technical skills and the domestic democratic background, to create cultural and political

awareness, capabilities and tools in order to finally get a fully fledged democracy, even thorough the electoral process. The international media and the public opinion should, instead, recognise that for the observers it is not a matter of trying to discover frauds and, at the end of the process, validate or not a political result and put some stigma on a government. It is, rather, matter of make the country involved feel part of the international community and of a bigger democratic construction. The target of human right system is to implement the human rights, not to sanction who is not compliant.

To this end a comparison between the final reports the EU electoral Observation Mission in now proposed. We used the reports of the EU mission in Mali in 2013, the one issued after the two rounds of the presidential, and the one issued after the two rounds of the parliamentarians. The choice is due to the fact that in 2013 parliamentary and presidential elections took place in two different periods. This allows to analyse two different kind of elections, held a few week of distance from one other; and to check if and how the recommendations after the first election have been taken in account in the second. Moreover Mali has a previous history of democratic institutions, and even if the crisis of 2012 put them in serious danger, this democratic history helped a smoother recovery.

5.7.1 The background

The beginning of the democracy in Mali can be established in the January 1992 after the promulgation of the Constitution. Since then, elections at national and local level have been organised on a regular basis up to 2012, when a political and military crisis interrupted the normal electoral cycle. In January of this year the MNLA (Mouvement National de Libération de l'Azawad) started a rebellion, at national level, whose effect was to weaken the central government and to demolish in less than two months the Malian political regime. In March of the same year a putsch took place, and the democratically elected president, Amadou Toumani Touré, was overthrown. These two episodes triggered an unprecedented crisis in the country with very dangerous spillovers on the regional political stability and security. A few days after the coup, at the beginning of April, an agreement brokered thanks to the ECOWAS (Economic Community of West African States) allowed the constitutional order to be re-established, and the president of the National Assembly was put in charge for managing the transition period. However, the northern part of the country remained out of the control of the central government, and in the same month of April the MNLA declared the independence of the Anzawad, a territory including the northern provinces of Tombouctou, Gao and Kidal. A few weeks later the MNLA was replaced by some Islamic groups imposing a fundamentalist interpretation of the sharia law: al-Qaeda in the Islamic Maghreb (AQIM), a splinter group of the

AQUIM the Movement for the Unity and the Jihad in West Africa, and Ansar Dine. In January 2013 a military French led intervention, Serval Operation, with the help of the Mali's army, as well as with the Chadian army and the African-led International Support Mission to Mali (AFISMA, MISMA in French) stabilised the situation. The road map for the transition period, adopted in January 2013, had as goals the restoration of the national unity bringing back under the governmental influence the northern regions; and the organisation of trustworthy and believable general elections. The town of Kidal, capital city of the region and one of the most important in the North, was dealt in a separate agreement signed in Ouagadougou in June 2013, approved by the international community, and implemented by the UN Mission MINUSMA deployed from July 1st 2013. This agreement allowed presidential elections to be held in July and August, and the parliamentary in November and December.

All the events happened in 2012 and 2013 put in questions the principles of the democracy, the respect of the sovereignty, the integrity of the state, its the secularism. It was, then, matter to restore the democratic legitimacy, and to elect a new government charged to obtain a pacification of the whole country.

Before starting the short analysis, some quick considerations about the timing of the elections. The elections took place fifteen months after the crisis. It is a quite short span of time considering what has been said in a previous section. It is true that in Mali a democratic system, even if not an ideal one, was already in place well before the 2012 crisis, and that this is a non negligible element fostering a faster restoration of the democracy. However when the roadmap with the dates of the elections was designed, part of the country was still out of a full control. At the time of both the elections the town of Kidal was a no go area for the army and the government of Mali, and under the control of the Serval operation. The northern part of the country was largely insecure, and the control of the government very weak. Due to this unstable security situation, no international electoral observation missions have been deployed in such part of the country. This means more or less one half of the territory but around 10% of the voters. In such a framework the elections took place anyway and, following the statements of the EU EOM, have been positively judged by domestic actors and by the international community²⁹¹. So, even if the chosen timing didn't respect the standard prescriptions, the country was able to have a working elected President and Parliament. This didn't prevent a new crisis to burst in 2014, which means that the democracy is not the panacea of all political problems. However this allowed to have a legitimised government which is now charged to demo-

291 "Tous les acteurs nationaux et l'ensemble de la communauté internationale ont évalué positivement les deux scrutins qui se sont déroulés dans le calme." See the Final Report of the EU electoral Observation Mission of Parliamentary elections par. 14. http://eeas.europa.eu/eueom/missions/2013/mali/reports_fr.htm

cratically solve, sustained by the international community, its domestic crisis.

What does it mean? It means that if the target of the elections was to have some form of democracy, and legitimised authorities for managing the difficult situation of the country, the goal has been reached. And this regardless of the formal perfection which the electoral process could have had or not. It is true that the democracy in itself has not been able to put an end to the crisis. The new government started in Algiers negotiations with the rebels,²⁹² but the northern regions are still highly insecure, attacks in the North continues to threaten the Algiers peace process, and MINUSMA forces are under attack too. However the elections allowed a legitimised government

The question is if a different timing could have helped to avoid the political crisis to keep going is pointless. In a situation like Mali it was important to quickly restore a government able to manage the country. It is not up to the international community to solve any crisis, but rather, whenever is possible, it is up to a legitimised government to deal with domestic problems, and in case to ask for international support.

5.7.2 Presidential elections

The presidential election in Mali took place July 28th and August 11th 2013 in the frame of the transition set in motion after the putsch in 2012. The putsch made still more evident how discredited the politicians were, and how their way to manage the power through the consensus had weakened the democracy and made almost fictional the political opposition. If, then, in the first period right after the putsch the civil society was more active in the political field, the political parties have been able to recover the initiative thanks to the Ministry of Territorial Affairs which involved them in the organisation of the elections. So the political parties gave a strong support to the electoral process, providing as well 10 members of the CENI (the National Independent Electoral Commission). A wide consensus about the necessity of having elections in a short delay allowed the electoral administration to work in a climate generally peaceful in spite the security problems in the northern regions.

The EU final report is structured in nineteen paragraphs, including the structural parts (introduction, annexes, summary and so on). The sections concerning to electoral process are: juridical framework; electoral administration; enrolment of the voters; registration of candidates; electoral campaign; media; women's participation; civil society and electoral observation; voter and civic educa-

292 The content of negotiation -which mainly regards a greater autonomy of the northern regions, with the possibility to have a regional assembly elected by direct universal suffrage and chaired by a person, itself elected by direct universal suffrage- can be found at <http://www.jeuneafrique.com/Article/ARTJAWEB20141208143012/#ixzz3LKZLMiLL>

tion; dispute, refugees and expatriates; vote; results; recommendations. This first glance already gives a flavour about the number of elements to be taken in account, when monitoring an election.

Having a closer look to the main paragraphs we can start from the legal and juridical framework. From this point of view the report notices that Mali has signed all the main regional and international tools containing the obligations for the elections. The domestic electoral law has been reviewed in May 2013, a few weeks before the first presidential round, with new important provisions which allowed, for instance, the refugees to vote, but for the presidential election only. In general the international obligations discourage last minute changes of the electoral laws, unless there is a wide agreement among the political players, which was the case in Mali, where the great majority of deputies voted in favour of such changes.

The electoral system establishes a two weeks delay between the first and the second round of the elections, which revealed to be a too short while form managing all the due tasks and leave enough time for the electoral campaign. In effect, after the first round, and after accomplishing all the tasks, only two campaigning days remained for the candidates.

The legal and juridical framework remains incomplete with reference to the regulations for the electoral campaign, and concerning the financing of the political parties and the expenses during the campaign. For the expenses, in particular, no control mechanisms are in place but a annual report to submit to the Supreme Court. So, in general, a tidying up is required, with special attention to outdated, not applicable, repeated or contradictory provisions, in particular the ones concerning the disputes about votes and results.

The electoral administration is composed by three main bodies. The Ministry of the Territorial Administration (MATDAT) which is in charge of the technical and operational organisation. The Independent National Electoral Commission (CENI), which is composed by two thirds of political parties representatives, and one third of civil society representatives. CENI is the authority in charge of supervision and follow up of elections, as well as of the management of the domestic and international observers. The third body is General Delegation to Elections, which is in charge of the electoral roll and of the public founding of the parties. In general, the local authorities responded in an adequate manner to the technical and logistic challenges which the elections proposed, and have been able to correct before the second round some of the failures emerged during the first round. The training of the polling staff has been conducted in an adequate manner, and some additional training sessions have been held between the two rounds in order to decrease the quite high rate of invalidated ballots registered during the first round. The salaries for the polling staff have been provided through a UNDP program targeted to sustain the electoral process in Mali.

Another sensitive point analysed in this final report is the voters registration. For the first time in Mali the electoral law considers to use a biometric system for registering the voters. The database to use is the RAVEC (Recensement administratif à vocation d'état civil) which implemented its activity of registration between 2009 and 2010. The electoral roll was created extracting the biometric data contained in the database on March 31st 2013 and involving the Malians born before December 31st 1994. This means that the about 160.000 young people (over a total of voters of 6.829.696, which means around 2% of them) which became of voting age in 2013 were not inscribed in the rolls, and couldn't vote. This is not the only shortcoming of the registration process. A revision of the electoral roll has been made during the month of June, in order to manage deceased voters, voters who had to be removed from the roll due to decisions of the justice, or because they moved. These last ones include the displaced which, unfortunately, have not been treated with special procedures. This is why it has not been possible to really evaluate in which extent they have been able to exercise their right to vote.

The registration of the candidates for the presidential election is subject to heavy restrictions, due the necessity of a sponsorship, and of a deposit of a quite high amount of money (ten millions of francs CEFA, around 15.000 euros). The sponsorship was declared non consistent with the Constitution in 1996, but in spite of this the electoral law has not been checked against the Constitution. The fact that the candidature for president is made personally, and not through the political parties, makes still more difficult to have any sort of control on the money spent for the electoral campaign.

Before going on through the others paragraphs, a few remarks deserve to be made. I hope that the analysis has shown the spirit which moves the observation. No judgements have been done so far. The legal tools have been analysed and, where it was the case, inconsistencies have been noticed. The same has been done for the other point, in particular concerning the voter registration activity. In this case shortcomings have been stressed but no evaluative language has been used. So we can ask some questions: the fact that over 160.000 people have been denied of their right to vote made the elections *non free and fair*? Does the fact that the electoral law was openly unconstitutional and that, in spite of this, it has not been amended make somehow invalid the electoral results? Should the observers denounce to the international community the non respect of the right to participate for the displaced whose right to vote has not been taken in account sufficiently? Has it to be said that the electoral process has been flawed?

In my opinion there are no simple answers to such questions, and if we look at them from the perspective of the electoral observation it can maybe be said that these questions are meaningless. The report is a mirror just reflecting elements where the new president, or the new government, has to

work about. It is important to focus on these shortcomings, to be aware of which part of the electoral process deserves improvement. Judgement has however to be used. Let say that is not the same if 150.000 young voters of all over the country are not allowed to vote due to an imperfect use of the RAVEC; or if 10.000 young voters of one single region -or a single city- ethnically characterised and politically oriented, are prevented from voting. What I mean is that it cannot be only matter of abstract figures, but the the distribution is important to understand in which measure the overall result can be affected. It could be easily opposed to this argument the idea that if there are individuals whose right is denied, this is more than enough to question the entire process. However I think that this would be only a point of principle, and that the realisation of a human right ruled system cannot be made with a simple switch and being immediately perfect. It is, rather, as we noticed, a process where shortcomings happen and have to be accepted, but with the will to amend them. So, it is matter of political assessment: the observers have just to report and create awareness in the country and outside.

The electoral campaign took place without major incidents. The majority of candidates and political parties signed a code of conduct which has generally been respected. Fraudulent usage of the stock of NINA cards, existence of fake polling booths, and stuffing have been denounced but, in spite of all these reported frauds, the overall confidence in the process remained untouched. The lack of regulations concerning a limit in the electoral expenses increased the gap between the candidates. Only the candidates and the parties disposing of financial resources have been able to campaign all around the country. Some cities, like Kidal for instance, because of the insurgency could be reached only by plane, and therefore only the candidates disposing of private jet could campaign there. The Islamic insurgency in the northern part of the country raised some questions about the role the religious factor could play during the campaign, while the army allegedly campaigned for one of the candidates.

A quite extended paragraph of the final report is devoted to the analysis of the media landscape. The participation right is made not only of real participation and right to vote, but it is made out of an *informed* participation. A misinformed participation is not a full participation, and that is why it is so important that the right to freedom of speech and information to be carefully monitored and analysed. Therefore the analysis of the media situation can help to better understand first of all if there is freedom of expression, and secondly if any kind of manipulation of the will of the voters happens. The analysis of media landscape in Mali has to take in account the literacy level of the population, and the overall economic situation which weakens the viability of the media and the professionalism of the journalists. As it happens in many other African countries, in Mali too the radios

are the most important media. There are plenty of them at all levels -national, regional and local- and they broadcast in French or in one of the local languages. It exists a national committee of equal access to media (Conseil National de L'Egal Accès aux Médias d'Etat, CNEAME) in charge of supervising the behaviour of the State-owned media (two radios and two televisions), and which didn't receive any complaint during the electoral campaign. On their side, the over 350 local private radios covered the electoral campaign selling political spaces instead of covering it with journalists and with impartial coverage.

The participation of women is as it can be expected in the country: the principle of equality is guaranteed by the art. 2 of the Constitution, but discriminations against women are still widely present in the legislation concerning the marriage, and the possibility of women to inherit. Generally speaking, as it could be easily expected, in the political life the women are under-represented, like they are in the decisional bodies of political parties. The parties, however, have in general a female section, like they have a section for the young people. In this framework UN Women program funded a program aimed to sensitise women toward the electoral process. The women are under-represented in the electoral administration too.

Two short paragraphs are devoted to the civil society and the electoral observation, domestic and international with some figures showing the remarkable participation of observers; and to the civic education and information to voters, where appreciation is manifested toward some initiatives of MATDAT.

A more detailed analysis has been devoted, instead, to electoral dispute. The report stresses the crucial role of the Constitutional Court in the presidential election, because this body is in charge of proclaiming the final results and of pronouncing about the regularity of the electoral process. The legal tools which regulates the procedures of the Constitutional Court impose that its debates are not public. This is interpreted as a lack of transparency, so that the report encourages to make more opened this part of the process. Another weakness can be identified in the fact that no intermediary jurisdiction is designed by the law in the electoral dispute, which is not consistent with the international obligations ratified by Mali. So the Court is the first and the last body pronouncing on contested votes and on preliminary results, and there is no real right to appeal. Moreover there is no deadline for proclaiming the final results, which can create problems due to the fact that the second round is due to take place 15 days after the first round. In this way any delay in the announce of the final results can affect the duration of the electoral campaign for the second round (which has been the case for the presidential and for the legislatives).

During the election day the Constitutional Court deployed some delegates to monitor the regularity

of the process. However the function of such delegates was based, following the report, on a too extensive interpretation of the law. Such delegates filled some forms whose legal value can be considered very doubtful.

A revision of the electoral law made in 2011 broadened the criminal dispositions related to the electoral process. And now, based on the gravity of the crime, fines can be inflicted, or jail. Anyway, most of the reported crimes have been attempts to influence the vote, or possession of bulletins pre-voted.

Attention is devoted, as well, to refugees and expatriated voters. The electoral law allows the vote to expatriates and refugees. For the refugees the government of Mali signed agreements with the neighbouring countries, assisted by IOM and UNHCR. Unfortunately these agreements have been signed quite late, which implied a delay in implementing the procedures. However, in order to protect the refugees, UNHCR gave the Mali's government only the name of the refugees who accepted their names to be listed. For this reason several missions were required for the registration to take place. Because of these retards, delays occurred in finding the NINA cards of the voters in the distribution centres where the voters had been registered before fleeing out of the country. The percentage of NINA cards delivered to refugees is not known. What is interesting, here, is that we can find one of the few spots of the entire document where the EU EOM show some kind of *disappointment*²⁹³ about the management of the electoral process.

There are, just toward the end of the report, a couple of paragraphs devoted to the elections days and to the results. The place and the length of the paragraphs show how the election day is not the core of the observation activities, but is only one issue among the others. What is said about the election day is little more than a tabulation of what the observers reported in their forms which cover far less than the 4% of the polling stations in the of the regions where they have been deployed (no coverage of the Northern regions). One interesting element of this section is that, here again, the low participation rate of refugees is stressed once more, and some possible reasons are proposed; but no evaluative language is used, in spite of the fact that clearly this issue represented a weakness of the process. A second thing to be noticed is the attention to the situation of the refugees considered a particularly vulnerable to group, whose rights have to be carefully monitored and protected.

The paragraph devoted to the results, of course, is not axed on the political outcome of the process. It is, rather, interested in the procedural aspects, which are described. The main element to be no-

293 "La MOE UE regrette que les procédures de recensement des réfugiés aient retardé le repérage de leurs cartes NINA dans les centres de distribution où ils avaient été enregistrés lors du RAVEC, ainsi que leur envoi aux ambassades des pays d'accueil." Final Report p. 37.

ticed is a difference of more than 47.000 votes between the number of cast votes, and the sum of the votes attributed to each candidate.

The report closes with 18 recommendations which are mainly based on the compliance of each step of the process to the laws of Mali, to the international and regional tools signed by Mali, and to the universal principles of the democratic elections. What it is important, in this case, is that the recommendations are focused to some main points that could be changed before the parliamentary elections. More recommendations concerning aspects which require a more time consuming activity, are postponed to the final report after the parliamentary elections.

5.7.3 Parliamentary elections

After having an idea what the content of a final report should be in order to help the democracy and the participation right, it is maybe of little utility to repeat the same analysis on the final report of the parliamentary elections. It could be, rather, interesting just to check if and in what extent the recommendations of the final report of the presidential elections have been taken in account, and if and how the electoral process has been improved.

So, what follows is a grid where the first column is the progressive number of the 18 recommendations made at the end of the final report of the EU EOM concerning the presidential elections; in the second column is summarized the content of each recommendation; in the third column it is reported what the final report of the legislative elections said (if it is the case) on the same issue; the fourth column just indicates yes or not or question mark if the comparison is not feasible, while the last column just indicates what page of the legislative final report contains the information reported.

No.	Recommendation in the Presidential final report	Follow up (if any) in the legislatives final report		
1	The gathering of the envelopes addressed to the Constitutional Court should be public	It is just noticed that the gathering has been heterogeneous. No mention to the Constitutional Court in particular.	no	p.33
2	Adoption of a new report of the polling booth allowing a reconciliation of the ballots paper.	The administration committed itself to implement this measure. In the training of the polling staff the information has been transmitted in a non uniform and not coherent way. The reconciliation didn't take place.	no	p.16

3	Preservation of the ballot papers after the counting procedures, and until the official announcement of the final results.	Preservation of the ballot papers remains one of the legal issues which have not been clarified by any kind of regulation.	no	12
4	Displaying of the result forms of every polling booth	No mention in the report.	no	?
5	Make durable the transparency and the traceability of the provisional results disaggregated by PB; make them available on the the Internet	No mention in the report. However the same recommendation is repeated at the beginning of the final report.	no	p.5
6	Make publicly available, even using the Internet, the information needed by the voters	No mention in the report. However the importance of the quality of information to be provided to the voters is again mentioned among the recommendations	no	p. 44
7	CENI didn't make public any of its conclusions. It should be done	No mention in the report. However the importance that CENI provides information to the voters is again mentioned among the recommendations	no	p.44
8	Supervision procedures should be implemented to verify the respect of the rule during the electoral campaign	No mention in the report. However in the section of the final recommendations the necessity to guarantee the respect of the laws is repeated (recomm. 14 and 15)	no	p.47
9	The way the Constitutional Court deals with the votes and with the reports of the PB is opaque.	The way of dealing with the reports of the PB remained opaque and the <i>modus operandi</i> of the Court was not explained	no	p.35
10	A clarification of the means of evidence during the electoral dispute is needed in particular when the political party agent file complaints about the reports of PB.	No mention in the report.	?	
11	The biometric roll should be made more inclusive handing	The weaknesses of the biometric roll still remain.	no	p.17

	over the NINA cards to the voters which still didn't receive it.			
12	A revision of the electoral rolls is recommended in order to take the deceased people out, and pay attention to displaced persons.	The revision didn't take place. The weaknesses of the electoral roll remain, in particular concerning the people who became of voting age in 2014, and the people not part of the rolls because of technical problems.	no	p.17
13	PB s do not have an unambiguous code, which made difficult for the voter to localise them	No mention in the report. However the recommendation 24 still suggest to make easier the localisation of the PB.	no	p.52
14	The MATDAT could spread through the media the electoral related informations, using the various national languages	With the help of other institutions the MATDAT produced commercials in the national languages for sensitising against vote buying. Others campaigns of civic education have been made financing the civil society. However the quality of information provided to the voters is still poor and an improvement on this field is suggested in the recommendation n. 18.	yes	p.30
15	The national structures of observation could observe tabulation of votes at central and local level	No mention in the report.	?	
16	All the domestic and international players should give more support to the national strategy promoting women participation called "Participation et représentativité accrues des femmes aux élections générales"	The activities of the strategy remained limited due to the lack of founding, and the activities during the legislatures remained very limited.	no	p.28
17	CNEAME should include the regional radios of the ORTM to produce and broadcast political space for all the candidates	No mention in the report.	?	

18	The media should make easier to understand what is political news and what is political advertising	No mention in the report.	?	
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The grid shows that very few points among the ones listed at the end of the final report for the presidential election have been addressed or solved in the electoral process of the legislatures. It can be added that the final report of the legislatures lists much more than 18 recommendations. The reason of the greater number of recommendations, 30, is that the ones of the presidential election were finalised to be realised in a short term, the few months before the legislatures. So the EOM decided to focus only on the points which could have realistically been addressed in the short time available before the new electoral process. Now, after the legislatures, the expected time span is much longer, say the five years before the next national elections which gives the possibility to address much more issues, and the ones more structural or complex.

However the question stemming after analysing the results of the legislatures is: how we should look at this low performance? This is, once more, the same evaluative question, which we now know how to avoid. Basically, first of all, we cannot use only technical tools to answer questions requiring political, economic and cultural awareness and skills. So the performance has to be interpreted, understood and not evaluated. This is not an issue which is in charge of the EOM, but is a political issue to be dealt by political organisations. Did the country receive, in between the two election, all the needed support to address the weaknesses? Were the 18 listed issues really addressable in the allowed time span? Have, however, attempts be made to address them? Of course all the points listed in the final report are important and essential elements of a good participation process. So the simple fact of having pointed at them, of observing them, is a sign of their importance. In spite of the EU suggestion, the electoral process didn't improve at the expected pace. Does it mean that the government is not willing to cooperate and to move toward a more accomplished democracy? Does it mean that the elections cannot be considered valid and true expression of the popular will? Does it mean that the new government is in some sort *illegal* and not to be recognised by the international community? We could indefinitely continue with this kind of questions and cast doubts on every single point. But we believe that the final issue is not, for the electoral observers, to be the gatekeeper of the democracy and give stamps of democracy or not. The aim is always to make the democracy, and the participation right with it, and all the human rights with them, to start, flourish and improve. To make of the democracy not only a political target, but a cultural one as well, so that the principles of the democracy can grow deep roots all over the world. So, unless blatant violations

of the right to participate happen, the aim of the international community at global and regional level, is always to support and sustain under all circumstances the good faith efforts to build a democratic process and to abide to it. No political process is, or can be, perfect. The government has, in any case, not to be sanctioned for not respecting this or that rule. It, rather, has to be sided and supported, politically and economically. The electoral observation is, under this perspective, a kind of assessment with a final to do list. It will be the civil society, the political parties, the institutions, the government, the international players in charge to build on these observation a idiosyncratic path to a sustainable participation.

A the end of this thesis quick and final remarks have to be done. It concerns the importance of the construction of a sustainable electoral process in order to build a viable democracy. Given that the democracy is a very complex and multifaceted idea, the sustainability it needs has to encompass several aspects. Basically, however, and for the sake of simplicity, we could stress three main elements: political, cultural and economic. This idea of sustainability in itself has several implications, but it means that first of all there have to be endogenous resources to be triggered to create a favourable environment; that the process requires time; that democracy cannot be considered only a political model, but a system or rules covering most of the aspects of human life: social, political, economic, cultural. So, in no way the democracy can be imposed. Because of its complexity, it has to be the outcome of domestic processes which have, in any case, to be sustained by the international community, and integrated in an international democratic system. The international community, on its side, has the task to watch in order to make the political process trustworthy and accountable in front to the people. Any lack of credibility of the international community can be a severe injury not only to the participatory process, but to the broader idea of the democracy as the political system for internal government, and external relations. And the simple political support could be not enough: it has to be completed sustaining all the aspects the democracy is made of. So, economic welfare and cultural prosperity need to be taken care of as an essential part of a sustainable democracy. Elections are eminently a political process mixed, as politics is, with cultural and economic issues, and therefore it has to be evaluated mainly as such, and not with the strict sieve of bureaucratic vision.

Therefore the activity of democracy building cannot be standardised. As it is noticed by Diamond:

[...] when we mention the term democracy promotion or democracy building, we tend to think of a fairly conventional set of tasks—helping to develop political parties, civil society organizations, representative and legal institutions, and so on. All of these are import-

ant. Indeed, all of the things that need to be done to promote and develop democracy in a historically authoritarian setting must be done in a post-authoritarian, post-conflict setting. However, post-conflict settings are distinctive in terms of the roles of violence, order, and “stateness.” If these challenges are not met, all the others—political, legal, societal, and economic—will fail.²⁹⁴

In such a perspective the enjoyment of the participation right and the implementation of the democracy cannot be watched at as a merely legislative activity. It is not enough a simple political action, although taken at the higher international levels, although compulsory it can be; it is not enough. What it is said in a post conflict environment we think could be extended to all the new or fragile democracies. Challenges have to be met, and these challenges vary from a country to another, from a historical period to another one, from a political situation to another. Therefore to simply state the participation rights and to expect they to be implemented all over the world following a same path, it is simply to neglect the richness and the meaning of the right in itself. This does not mean to give up to the universality of the human rights; at most it means to give up to the uniqueness, which is different from universality.

So, the democracy and the participation rights have to be tailored following the shape of the country which has to wear it. This, again, does not mean that they have to be stretched and forced to fit it. Not even the country, to remain in the same metaphor, can be squeezed to forcefully enter a size which doesn't belong to. Only to imagine that every country could be dressed with the exactly the same suit means to imagine an army with the same uniform, and not a plurality of peoples with traditions, cultures and needs. And the democracy, the international democracy in particular, is among other, exactly a way to let the diversity represented and expressed. A single and unchangeable type of democracy would transform in a dictatorial nightmare.

294 Diamond, Larry. 2006. p. 101.

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